TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

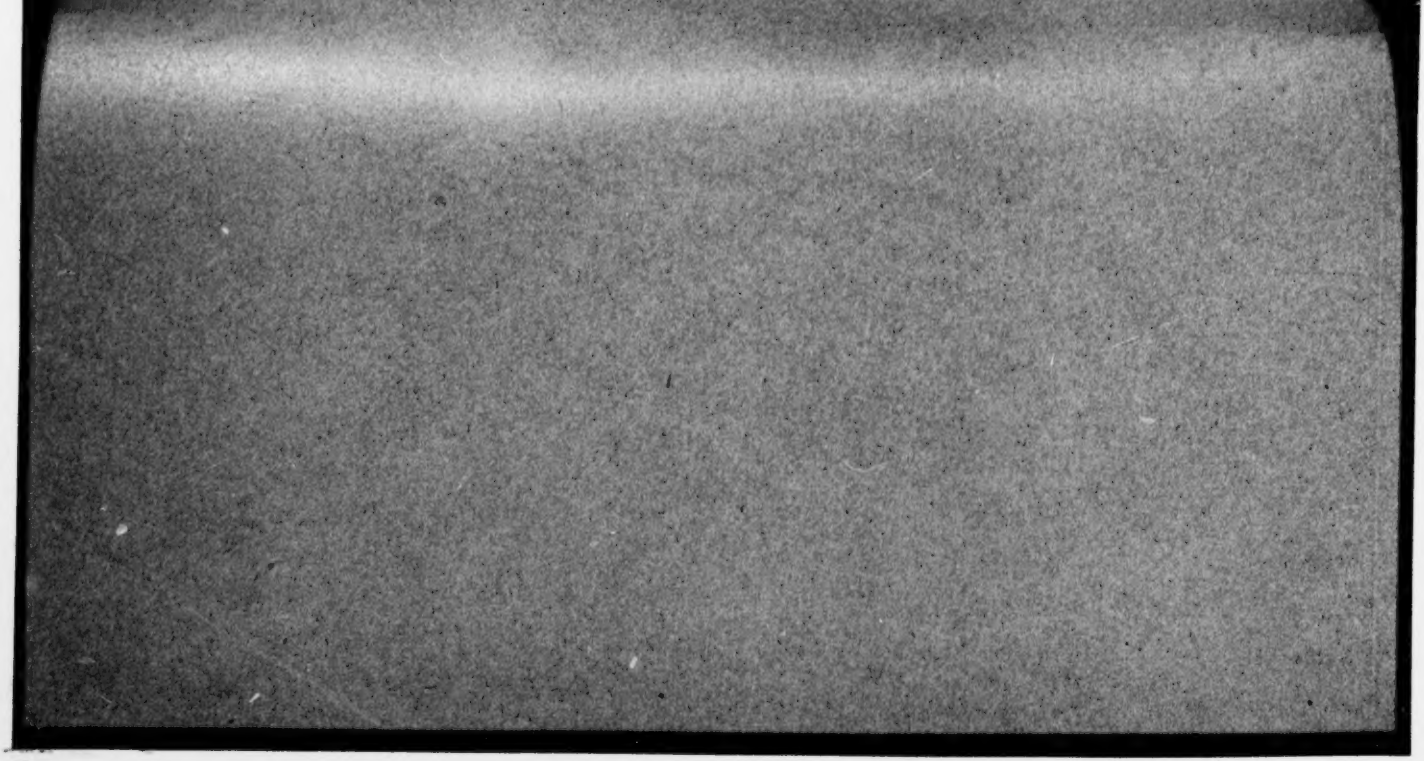
vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED OCTOBER 29, 1900.

(17,948.)



(17,948.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 463.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1 Be it remembered that on the 12th day of June, A. D. 1894, at a regular term of the supreme court of the State of Florida, came the appellants, William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, by counsel, and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and order of the circuit court of Florida for Leon county, in a certain cause wherein The Florida Central and Peninsular Railroad Company, a corporation under the laws of Florida, was plaintiff and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, and of the appeal therein from the decree of the circuit court therein rendered; which said transcript of the record of the cause aforesaid and subsequent proceedings to judgment and appeal therefrom *is* in the words and figures as follows, to wit:

Pleas in the circuit court of the State of Florida for the second judicial circuit in and for the county of Leon in a certain cause therein wherein Florida Central and Peninsular Railroad Company is plaintiff and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, are defendants.

Be it remembered that on the second day of November, in the year of our Lord one thousand eight hundred and ninety-two, came the Florida Central and Peninsular Railroad Company, plaintiff in the case aforesaid, by John A. Henderson, its attorney, and filed in the clerk's office of the circuit court aforesaid its bill of complaint in the words and figures following, to wit:

2 In the Circuit Court of the 2nd Judicial Circuit of Florida in and for the County of Leon Thereof. In Chancery.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

To the honorable the judge of said court:

The Florida Central and Peninsular Railroad Company, the complainant, by its solicitor, brings this its bill of complaint against William D. Bloxham, as the comptroller of public accounts of the State of Florida, and against John A. Pearce, as sheriff of Leon county, Florida, defendants; and thereupon, humbly complaining, shows unto your honor:

That the complainant is a corporation duly organized under the laws of Florida, under letters patent of date 17th November, 1888, and owns a line of railroad in said State which is composed of the several lines of road organized and constructed under authority of the laws of Florida, as hereinafter set forth.

A.

Of a line of railroad from Jacksonville to Lake City, in the State of Florida, which was built by a company known as the Florida, Atlantic and Gulf Central Railroad Company, duly chartered and organized under the laws of the State of Florida, chapter 481 thereof, and the several acts amendatory thereof.

3 B.

Of a line from Lake City to Quincy, in the said State, with a branch from Drifton to Monticello, both in the county of Jefferson thereof, which was built by a company known as the Pensacola and Georgia Railroad Company, duly chartered by and organized under chapter 484, laws of Florida, and the several acts amendatory thereof.

C.

Of a line of road from Tallahassee to St. Marks, in said State, which was built by a company known as the Tallahassee Railroad Company, and chartered by and organized under the laws of Florida, chapter —, and the acts amendatory thereof.

D.

Of a line of road from Quincy to Chattahoochee, in said State, which was built by a company known as the Jacksonville, Pensacola and Mobile Railroad Company, chartered by and organized under the laws of the State of Florida, chapter 1716 of said laws, and the acts amendatory thereof.

E.

Of a line of road from Fernandina to Cedar Keys, in said State, built by a company known as the Florida Railroad Company, which was chartered by and organized under chapters 482 and 729 of the laws of Florida and the several acts amendatory thereof.

F.

Of a line of road from Waldo to Ocala, in said State, which was built by a company known as the Peninsular Railroad Company, chartered by and organized under chapter 729 and its amendatory acts aforesaid.

4 G.

Of a line of road from Ocala to Wildwood, in said State, which was built by a company known as the Tropical Florida Railroad Company, under the authority of chapter 729 aforesaid.

H.

Of a line of road from Wildwood to Tavares, which was built by a company known as the Leesburg and Indian River Railroad Company, organized under the General Laws of Florida, chapter 1987, and the acts amendatory thereof.

J.

Of a line of road from Jacksonville to Hart's Road, which was built by a company known as the Fernandina and Jacksonville Railroad Company, also organized under chapter 1987 of the general law on the subject of railroads and canals, and its amendatory acts.

K.

Of a line from Wildwood to Plant City, built by the Florida Railway & Navigation Company on its route to the waters of Tampa bay.

L.

Of a line from Tavares to Orlando, built by a company known as the Tavares, Orlando and Atlantic Railroad Company.

M.

And of a line of railroad from Plant City to Tampa, in completion of its line to the waters of Tampa bay, and built by complainant.

That the several roads as above indicated were constructed and in operation about as follows:

5

A, B, C, as above designated,			for years prior to 1865.
D,	"	"	in 1869–71.
E,	"	"	for years prior to 1865.
F,	"	"	in 1877.
G,	"	"	" 1881.
H,	"	"	" 1883.
J,	"	"	" 1880.
K,	"	"	" 1887.
L,	"	"	" 1887.
M,	"	"	" 1891.

That the several acts under authority of which these several lines of railroad were constructed are hereby adopted by this complainant as parts of its said bill, with the usual reference to their several provisions as though fully set out herein.

That in the year A. D. 1855, which was prior to the construction of any of the aforesaid lines of railroad, the legislature of the State of Florida, under the authority of the constitution of said State, passed a law commonly and hereafter called the internal-improvement act of Florida and numbered as chapter 610, Laws of Florida, approved Jan'y 6th, 1855.

That the constitution of the State of Florida in force at the time of the passage of said act, chapter 610 aforesaid, authorized and directed the legislature to provide for and encourage a liberal system of internal improvements.

That the act aforesaid, chapter 610, created a public fund, called the internal-improvement fund of Florida, and vested the same in certain trustees, and invested the fund with a large and very valuable quantity of lands, and declared the construction of certain railroads and canals within the State of Florida

6

as works of public improvement which should be aided by the State out of said fund.

That at the date aforesaid the State of Florida, with its area of 50,000 square miles, had an aggregate population of less than two to the square mile, two-fifths of whom were slaves; that she had not one mile of railroad propelled by steam, and only one tramway of 22 miles pulled by mules; that her population was as poor as it was sparse, and her people with their own available resources were totally unable to perfect any works of improvement in the way of encouraging settlement and facilitating the development of its resources and the utilizing of its commercial advantages; that the approbation of the people was given to the grant of all constitutional aid to the works of internal improvement so as aforesaid declared as proper to be aided by the provisions of said act.

The lines of railroad hereinbefore described as A, B, C, D, E, F, G, K, and M were those constructed and authorized so to be by this act and their respective charters, in compliance with the fourth section of said act, and were parts and parcels of those lines therein declared to be proper improvements to be aided from the State fund in the manner indicated in said acts.

That of the several railroad companies hereinbefore referred to there had been chartered previous to the date of this act only the Florida, Atlantic & Gulf Central Railroad Company, the Tallahassee Railroad Company, the Pensacola & Georgia Railroad Company, and the Florida Railroad Company, but each of these com-
7 panies chartered by the legislature, and any that might thereafter be chartered, any portion of whose routes might be within the lines or routes so declared to be proper improvements for aid as aforesaid, should have the rights and privileges of constructing that part of the said lines embraced in their charters, and all the portions of the lines of complainant, which include all of its said line of road except so much thereof as is built between Wildwood and Orlando and between Jacksonville and Hart's Cross-roads, were authorized to be built with the said lines or routes entitled to receive the aid given by said act and its amendments.

Your orator would show that by reference to said internal-improvement act and the said act incorporating the said railroads it will appear that the State of Florida did not reserve any right to alter or amend or repeal said acts, nor was there any law then in force prior to their enactment which authorized such repeal, alteration, or amendment, nor was there any law applicable to the said railroads inconsistent with the provisions of said internal-improvement act and said acts of incorporation, with regard to the tax on railroad property and the exemptions thereon, and it was the intent of the legislature at that time, and the people of the State and said legislature have shown the said intention ever since (as by reference to the various laws touching the subject of exemption of railroad property from taxation will appear), that the exception contained in said internal-improvement act and said acts of incorporation should be continued in full force and effect during the term prescribed in

said acts, and particularly should so continue in favor of the road from Fernandina to Cedar Keys, with branch to Tampa.

8 That the act, chapter 3558, Laws of Florida, authorizing the assessment of taxes on certain railroad property to pay the same for the years 1879, 1880, and 1881, did not specify the property of the Florida Railway and Navigation Company and its constituents as liable to taxation, and the same was in fact exempted at the time of the passage of said act, and the State officers had no authority to levy upon said property for such taxes.

Your orator would further show that although the State constitution of 1868 enacted that no railroad property thereafter should be exempted from taxation, yet that said State constitution was inconsistent with the Constitution of the United States, in that it sought to deprive the companies then owning the property now belonging to the complainant of vested contract rights to such exemption, and that said State constitution abrogated the contract at that time in force between the State and the said railroad companies and illegally impaired the obligations imposed thereby upon the State of Florida, and is therefore null and void.

That among the grants given to said lines of road by said acts, and so given in aid of the construction of said lines of road, and without reference or limitation as to the proprietorships therein or to any changes in such ownership, were:

The exemption of the capital stock of any railroad company accepting the provisions of said act forever from taxation; and

The exemption of the roads, their fixtures and *fixtures and* appurtenances, including their shops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers or for the repair and maintenance of

9 the roads, from taxation while the roads are under construction and for the period of thirty-five years from their completion.

The line of railroad, herein designated as "A," between Jacksonville and Lake City was built by its company, the Florida, Atlantic and Gulf Central Railroad Company, which accepted the provisions of said act, according to the provisions of the act, and was accepted by the trustees of said internal-improvement fund as a completed line on the — day of ——, A. D. 1866.

The Pensacola & Georgia Railroad Company likewise accepted the provisions of said act for its entire line to Pensacola and built the line of railroad, designated as "B," between Lake City and Quincy, with branch to Monticello, and acquired the line of the Tallahassee railroad between Tallahassee and St. Marks, "C," which was also built in accordance with the terms and requirements of said internal-improvement act, and they were accepted as a completed road by the trustees of the internal-improvement fund on the — day of ——, A. D. 1866.

The Florida Railroad Company also accepted the provisions of the internal-improvement act and built according to its terms the line of road between Fernandina and Cedar Keys, herein designated as "E," which was accepted by the trustees and was a com-

pleted road according to the provisions of said act on the — day of ——, A. D. 1864. The Florida Railroad Company likewise accepted the provisions of said act, chapter 610, for so much of the line of complainant's road as lies between Waldo and Tampa bay,
10 which was constructed when and in the manner as hereinafter stated.

For non-compliance with the requirements of the internal-improvement act, as aforesaid, in the payment of semi-annual interest due upon completed roads to the sinking fund of the said internal-improvement fund, the following roads were seized and sold by the trustees of the internal-improvement fund under the provisions of said act, and were bought and afterwards owned and operated as follows—that is to say: For such defaults—

A. The Florida, Atlantic & Gulf Central railroad and all of its property of every kind was seized by the trustees of the internal-improvement fund and legally sold on the fourth day of March, A. D. 1868, to William E. Jackson and his associates, who, under the provisions of the internal-improvement act aforesaid, chapter 610, and of an act approved July 29th, 1868, being chapter 1646, Laws of Florida, were vested with the powers and franchises granted to the Florida, Atlantic & Gulf Central Railroad Company, and were made and thus became a body politic and incorporate under the name of the Florida Central Railroad Company, and as such and until as hereinafter stated the said Florida Central Railroad Company owned and operated the lines of this complainant's road "A" from Jacksonville to Lake City, as aforesaid.

B. The Pensacola & Georgia railroad, which included the road to St. Marks and all its property, for like default was in like manner seized and legally sold on the second day of March, A. D. 1869, to F. Dibble and associates; and subsequently, under the provisions of said internal-improvement act and the provisions of an act
11 entitled "An act to perfect the public works of this State," being chapter 1716 of the Laws of Florida, and the acts amendatory thereof, the said associates or their assigns were made a body corporate and entered as owners into the possession of the line of complainant's railroad from Lake City to Quincy and from Drifton to Monticello and the road from Tallahassee to St. Marks, and owned and operated the same under the name of the Jacksonville, Pensacola & Mobile Railroad Company until as hereinafter set forth.

E. The Florida railroad, with all its property of every kind, which is so much of the complainant's line of road as lies between Fernandina and Cedar Keys, was for like default in like manner seized and sold on the first day of November, A. D. 1866, to Isaac K. Roberts and his associates, who, under the provisions of the said internal-improvement act, chapter 610, Laws as aforesaid, and of chapter 482, Laws of Florida, and its amendatory acts, became the owners of said line of road, and thenceafter until as hereinafter stated operated the said line of road as a body corporate under the name of the Florida Railroad Company.

That between the years A. D. 1871 and 1873 the Jacksonville, Pensacola & Mobile Railroad Company built and completed and

thenceafter until as hereinafter stated operated the portion of complainant's line of road herein designated as "D" and being that part thereof which is between Quincy and Chattahoochee and which is upon the line or route declared by act, chapter 610, to be proper to be aided by the provisions of said act.

That under and by virtue of the provisions of the charter
12 of the Florida Railroad Company, chapter 729, Laws of Florida, the president and directors of the said Florida Railroad Company on the 22nd day of April, A. D. 1876, set off the construction of that portion of their line and of the line of this complainant which is between Waldo and Ocala to persons desirous of constructing the same, and such persons, under the authority therein given to have a distinct organization, associated themselves together as a body corporate under the name of the Peninsular Railroad Company, which built and thenceafter and until as stated herein operated the portion marked "F" of complainant's line of railroad between Waldo and Ocala, and which was completed on the first day of January, A. D. 1879.

That by the same authority the proper officers of the Florida Railroad Company, on the 22nd day of January, A. D. 1881, set off to persons desiring to construct the same the right of constructing so much of its said line of road as was between Ocala and the waters of Tampa bay, and such persons, under the authority therein given to have a separate organization, associated themselves together as a body corporate under the name of the Tropical Florida Railroad Company, and built that portion of said line and of this complainant's line which lies between Ocala and Wildwood, and is marked "G," in the years A. D. 1881 and 1882.

That under the terms of the statutory mortgage created by chapter 1716, Laws of Florida, all that portion of complainant's line between Jacksonville and Chattahoochee, and including the branch to Monticello and the St. Marks road, was, on the twenty-fifth day of
13 September, A. D. 1879, sold under decree of foreclosure to Edward J. Reed, who, together with his associates, organized a company under the general laws of the State of Florida, known as the Florida Central & Western Railroad Company, which latter company was by deed of the said Reed dated 28th of February, 1882, invested with all the rights, privileges, and immunities covered by said mortgage and of the charters and statutory benefits of the several constituent companies, but without becoming in any way obliged to pay any of the debts or obligations of any such companies.

On the 30th day of March, A. D. 1880, the Fernandina & Jacksonville railroad, being that portion of complainant's line which is between Jacksonville and Hart's Cross-roads, and herein marked as "J," was built by a company having the name of the railroad, the company organized under the general law, chapter 1987, of the State of Florida.

On the 18th day of January, A. D. 1872, the name of the Florida Railroad Company was changed to the Atlantic, Gulf & West India Transit Company by chapter 1918, Laws of Florida.

Under a decree of the circuit court of the United States for the northern district of Florida, in a suit between Doggett, receiver, and the Atlantic, Gulf & West India Transit railroad, for the enforcement of the payment, to the use of the trustees of the said internal-improvement fund, of a sinking fund for the redemption of certain of the bonds of the Florida Railroad Company, which were issued under the provisions of the said act, chapter 610, and which had not been returned by the sale of said line of road in 1868, as aforesaid,

but were still outstanding, so much of your orator's road as
14 then belonged to said company, being that portion which lies between Fernandina and Cedar Keys, with all of its property and franchises, was sold by J. B. C. Drew, master, to Edward N. Dickerson and C. D. Willard, trustees, and thereupon these trustees, for themselves and their associates, formed the Atlantic, Gulf & West India Transit Company under the said act of 1853, chapter 482 and chapters 610 and 729, and the act of January 25th, 1869, respectively. This company's name was changed in 1881 to the Florida Transit Railroad Company.

On the 22nd day of December, A. D. 1882, the following companies were consolidated into one company, according to the laws of Florida, viz: The Atlantic, Gulf & West India Transit Company, the Peninsular Railroad Company, the Tropical Florida Railroad Company. The company thus formed was called the Florida Transit & Peninsular Railroad Company.

On the 29th day of February, A. D. 1884, the Florida Transit & Peninsular Railroad Company, the Florida Central & Western Railroad Company, the Fernandina & Jacksonville Railroad Company, and the Leesburg & Indian River Railroad Company were consolidated into one company. The company so formed was called the Florida Railway & Navigation Company.

The Florida Railway & Navigation Company built its line of railroad from Wildwood to Plant City and completed the line begun by the Leesburg and Indian River Railroad Company to Tavares.

The several companies thus consolidated had bonded in-
15 debtedness incurred by construction and operation, as aforesaid, and severally secured by deed of trust on their respective lines which were outstanding as follows:

The Florida Transit Railroad Company on May 10th, 1881, issued 1,000,000 of 6% bonds due March 1st, A. D. 1911;

The Peninsular Railroad Company on Aug. 11th, 1878, issued $350,000 of 7% bonds due on Aug. 1st, 1900 (1900);

The Fernandina and Jacksonville Railroad Company, Aug. 11, 1880, issued $300,000 of 7% bonds due March 1st, A. D. 1900;

The Florida Central & Western Railroad Company on 9th March, 1882, issued $2,808,000 of 6% bonds due March 1st, 1922; for defaults in the payment of the interest on which bonds it was provided in each case that the entire indebtedness should, at the election of the trustees of the respective bondholders, become due and payable, principal and interest. To secure the consolidations of the several companies, as herein stated, into the Florida Central & Western Railroad Company and of other companies into the Florida Transit &

Peninsular Railroad Company mutual concessions were necessary, and your orator avers that each of said changes and consolidations were made by radical changes in the holdings of the capital stock of said company, and that with each and every of such changes and consolidations parties not before interested in the one and the other of said constituent companies thus became *bona fide* holders of legal estates in such companies from the respective dates of said consolidations and changes, and entitled to the protection of the existing laws to their property from and after the respective dates of such several acquisitions, and in like manner it is true that the consolidations of the

16 aforesaid several companies into the Florida Railway and Navigation Company was accomplished with like changes of interest and with the acquirement of new interests by the several holders of the capital stock of said last company, and holders thereof from the date of such consolidation became *bona fide* holders of proprietary interests in each of said constituent properties, and which interests were then acquired subject to the laws of such property as they then existed and entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property; that such changes of holdings were equal to more than one-half in value of each and every of said properties.

Your orator avers that the effect of the legisla*ture* (tion) hereinbefore set forth was an exemption of all its lines of road which were built on the lines indicated in the 4th section of the internal-improvement act from taxation while under construction, and for a period of thirty-five years from the date of the completion of the several integral parts, as herein set forth, none of which limitations of time have expired; that the exemption as aforesaid was an immunity given as a consideration for the construction of the said several lines of railroad and was in the nature of an additional value to said roads over and above their values as determined by the volume of business to be done by them or the earnings their owners received from such sources, and your orator avers that such immunity was an inducement, and a controlling inducement, to the investment of the moneys which were necessary to be expended in the construction of each and every the parts aforesaid of said separate lines of road on the routes indicated in said internal-improvement act.

17 By reason of which premises your orator avers that the exemption of said lines of railroad from taxation for the several periods of time, as alleged, became, by contract of the State for the consideration aforesaid, a part and parcel of the property value of said roads and was not intended to be and never was in fact a personal privilege or gratuity to the corporations respectively that built said lines of road or either or any of them; that the primary purpose of this legislation was the construction of the works belonging to the system devised by the said internal-improvement act, chapter 610, Laws of Florida, and not the extension of aid or bounty to the corporations that had or might acquire the right to construct the works designated therein, and this exemption became

a part of the value of the property of the railroad which your orator acquired in its acquisition of each and all of its said lines of the routes included in said system; that this was the law of the property as declared by the courts of the State of Florida when the Florida Railway and Navigation Company acquired the same.

Your orator charges that neither the said internal-improvement act, chap. 610, nor either of the acts amendatory thereof wherein was granted the exemption from taxation on the properties of your orator, nor either of the acts under which said several lines of road were constructed, contained any provision for or any reservation of power in the legislature of Florida to alter, amend, or repeal the said immunity of exemption from taxation as herein set forth. Wherefore it says that any and every act of the State of Florida, either through amendment of its constitution or by act or resolution of its legislature in so far as it was thereby attempted to re-
18 voke, repeal, or annul the said exemption from taxation, was in violation of the rights of your orator as guaranteed by the Constitution of the United States, which does not permit vested rights under previous contracts to be impaired by subsequent enactments.

That the act or resolution under which the said Barnes claimed to assess back taxes for the years 1879, 1880, and 1881 upon the Florida Railway and Navigation Company was not a law of the State of Florida, and, if a law, does not specify that company and was not applicable to it, and the act of such assessment, being in violation of your orator's previously conceded and enjoyed exemption, is null and void.

That this exemption from taxation was accorded the several portions of your orator's line until the year A. D. 1885, when William D. Barnes, in his capacity of then comptroller of public accounts for the State of Florida, made an assessment of taxes upon the several companies then controlling the several parts of this line for State and county purposes. A copy of this assessment is hereto attached and marked Exhibit A and made a part of this bill for all purposes of reference.

That this assessment was null and void, as appears on the face of it, for, among others, the following several reasons:

The Florida Railway and Navigation Company did not exist, had not been created, and could not and did not own the property assessed or any property in the State of Florida or elsewhere during the years 1881, 1882, or 1883, or either of them, nor in 1884,
19 except as herein stated.

The assessment was made in Gadsden county against the Florida Railway Navigation and Telegraph Company; that in other counties there was no assessment of values as in Baker and Wakulla counties; that there *was* apparent misnomers and failures definitely to assess properly *pro ratas* of rolling stock, as in the assessments of Alachua county, although the assessment that was made therefor was upon an aggregate in excess of the valuation of the entire property.

The assessment made for Clay county exhibited an error of $7,000

in the aggregate of valuation; that the assessment was confused and misleading in stating and scheduling rolling stock as realty, as in Levy, Gadsden, Suwannee, and other counties, and as personal property, as in the counties of Duval, Baker, Bradford, Leon, and other counties.

That the assessment was not upon a uniform basis of value for the same kinds of property, as in the instance of the assessment of certain lines of telegraph of your orator at $50, when, for the same years, the telegraph lines of the Western Union Telegraph Co., whose lines were as good or better than those of your orator, were only assessed at $10 per mile.

The line of railroad then belonging to the said Florida Railway and Navigation Company was on the 30th day of May, A. D. 1885, advertised for sale by the sheriff of Alachua county by virtue of a warrant issued by the said William D. Barnes, as comptroller as aforesaid, and the said sheriff and the said comptroller threat-
20 ened to sell the said property of said company for the taxes so assessed against it for the years 1881, 1882, 1883, and 1884; that not only was it the intention of said officers to make a sale of said railroad on said account, but your orator charges that they then and on that day distinctly stated to its officers and agents that it was the intention of the executive of the State to forcibly put the purchaser of said road at such sale into the possession of said road; whereupon, under the duress of the great wrong and injury that was then unlawfully threatened to said property and because the said Florida Railway and Navigation Company was powerless to protect itself from the wrong in the premises, the said company paid to the defendant, the State comptroller, as aforesaid, under protest that it was arbitrarily, illegally, and forcibly extorted from it, the amount of the taxes which had been assessed, as aforesaid, against it and its constituent properties, amounting to the sum of $140,812.47, and your orator attaches hereto as Exhibit "B" a copy of the receipt for the same and the protest of said company against the payment, as aforesaid, signed by said William D. Barnes, comptroller, as aforesaid, and which it makes a part of this its bill.

That on the eighteenth day of October, A. D. 1885, the said William D. Barnes made an assessment on the lines of the Florida Railway and Navigation Company under the authority of an act of the legislature of the State of Florida, being chapter 3558 of the same, approved on the 12th day of February, A. D. 1885, for taxes on said lines of road of the State of Florida and the several counties, as indi-
cated in a copy of said assessment, which is hereto attached
21 and marked Exhibit "E" and which is made a part of this bill, for the years 1879, 1880, and 1881.

And your orator charges that said assessment is illegal and unjust and without any true warrant of law; that the pretended act authorizing the same is unconstitutional and in violation of the contract and other rights of the Florida Railway and Navigation Company, and of its stockholders and of its bondholders and each and every of them, and of your orator succeeding to the rights of such bondholders, as hereinafter stated, and is likewise wrongful, in-

jurious, unjust, and oppressive to your orator, and it specifies, among other reasons, that the same is so.

That when the Florida Railway & Navigation Company acquired its said line of road there was no lien in existence of such an assessed tax, and no notice of or even intimation of an intention to claim for the State of Florida a right to make such assessment; that by the law which was in force when it acquired the line of its road, which includes the portion of its line covered by this assessment, there was no assessment thereon for the years 1879 or 1880, and an assessment thereon for 1881, which had been paid as aforesaid; that the law so in force then expressly prohibited the taxing power from taxing said company's road, or any other property in the State, even in case the same had been improperly omitted from the taxing rolls, and had thus improperly escaped taxation for more than three previous years from the time of making an assessment.

Your orator further avers that there were properties of large values, to wit, lands in the counties of Madison, Suwannee,
22 Alachua, and Columbia, and in other counties of this State, and lands elsewhere in the State, which were improperly omitted from assessment for taxes during the years A. D. 1879, 1880, and 1881, and each of them, and that the act aforesaid, to wit, chapter 3558, Laws of Florida, was unconstitutional and void in that the said chapter 3558 did not provide for a uniform and equal rate of taxation: and, further, that it did not attempt to secure a just valuation and assessment for all classes of property, but was enacted to reach only property of that class with that of your orator, and there was no law at the time of its passage for reaching the other classes of property, as alleged in this bill, which were omitted from assessment, and which thereby escaped taxation for said years, nor has any law been since enacted to correct the inequalities in assessments and to remedy the wrong done to your orator's property.

Your orator alleges that at the time the Florida Railway and Navigation Company was organized as a corporation and acquired its line of road, as aforesaid, it found the properties, which were then in existence and which are now of your orator's lines of road, assessed for the year A. D. 1880, as in Exhibit "C," hereto attached, will more fully appear, and your orator insists that it was an exhaustion of the State's and the tax-making power over the property when the assessment was made, and the time provided by law for correcting errors therein had expired, which time has long since elapsed in so far as the same could be made a lien on the property itself, and your orator avers that the right to levy any additional tax on the values of said property, if it exists at all, exists only as against the owners at the time of the property, and that the
23 same is not now a lien on the property of your orator, and that any law of subsequent enactment which attempts to create a lien on this property in the hands of purchasers for value is void.

Your orator further shows unto your honor that on the 1st day of July, A. D. 1884, the Florida Railway and Navigation Company

made an issue of $10,000,000 of first-mortgage coupon bonds and made its certain deed of trust to all of its property, including the several lines of railroad as designated herein, to secure the payment of said bonds, principal and interest, and that by the terms of said bonds and mortgage it was provided that on defaults in payment of interest of said bonded indebtedness the whole principal and interest of said bonds should become immediately due and payable; that it disposed of, for value and to *bona fide* holders, more than $5,000,000 of said bonds; all of which was done and accomplished prior to the date of the assessment as last herein complained of by the said William D. Barnes.

That one of the purposes of said bond issue was to retire underlying bonds of the several constituent companies forming the F. R. & N. Co., as hereinbefore stated, but that the purpose so to do had been entirely futile, and such underlying bonds were not redeemed.

That on the 26th day of October, 1885, for the failure upon the part of the said Florida Railway and Navigation Company to pay to W. Bayard Cutting the amount of money hereinbefore stated to have been paid W. D. Barnes, comptroller of the State of Florida, on account of the taxes as paid, and which sum was borrowed from the said W. Bayard Cutting for that purpose, and judgment at
24 law thereupon, and for defaults in the payment of the interest of its consolidated bond-and for the payment of the interest on each of the underlying bonds, as hereinbefore stated, which defaults had continued the required time, and for the adjustment by the said several trust companies—that by reason of said defaults and the continuation thereof the whole of the said bonded indebtedness, principal and interest, was due and then payable; the lines of the railroad of the Florida Railway and Navigation Company, as it then existed, *was* upon bills duly filed by the said W. Bayard Cutting and by the said several trust companies, representing the holders of said bonds in the circuit court of the United States for the northern district of Florida, for the foreclosure of said liens and for the sale of the property thereunder.

That on that date H. Rieman Duval was appointed receiver of the said court, and took the said property into his hands as receiver; that afterwards, to wit, on the — day of March and the — day of July, 1889, under decrees rendered in each of the said several causes, the entire properties were sold severally under their first liens and as a whole under the lien of the mortgage created by the Florida Railway and Navigation Company

That the amounts realized from said sale were far short of even the accumulated interest on said indebtedness, and, with the exception of one case, was far less than the interest on each particular indebtedness.

That W. B. Cutting, as agent, bought the said property, and he and his associates organized the complainant company in this cause, and the company was admitted into the possession of the
25 property so bought, all terms and conditions being previously complied with on the first day of May, A. D. 1889, and has remained in possession since then.

That the rights and interest of the complainant in the said several properties relates back to the date of the said several respective mortgages created as aforesaid, and that your orator has thus become entitled to all of the assets of said company, included in which is the right to recover the amount of $140,812.47, unlawfully collected by the said Barnes, as comptroller, from the Florida Railway and Navigation Company, and to any and all such sums as at other times may have been in the same way unlawfully collected from the said receiver during the continuation of his management of said property as such.

Your orator avers that it is in no other wise whatever the successor to the Florida Railway and Navigation Company, and that it holds its property under and by virtue of liens created a long time in the advance of the pretended assessments under chap. 3558 of the Laws of Florida.

Further complaining, your orator says that on the 8th day of June, 1891, without any previous notice whatever to your orator, there was approved by the governor of the State of Florida an act, being chap. 4703 of the Laws of Florida, reference to which is here made as a part of this bill.

That, pretending to act under the authority of said act, the comptroller of the State of Florida has directed and the sheriff of Leon county intends and has undertaken to seize and sell the
26 property of your orator for the State and county taxes so illegally assessed for the years 1879, 1880, and 1881; all of which doings are greatly to the wrong and injury of your orator as tending to injure the credit of its company and affects prejudicially the values of its property and will cast a cloud upon the title of your orator thereto. Attached hereto is a copy of the comptroller's warrant to said sheriff, marked D and made a part of this bill.

That your orator is informed and believes that the said sheriff, unless restrained by the order of the honorable court, will sell the property of your orator for the purposes as set forth, and it attaches hereto a copy of the published notice given by the sheriff of his intention to sell said property on the 7th day of November, 1892, which is marked Exhibit — and made a part of this bill.

That all of these wrongs and injuries to your orator in his right and title to his property are against equity and good conscience and inasmuch as your orator is without relief except in a court of equity, where such things are cognizable.

To the end, therefore, that the defendants may, if they can, show cause why your orator should not have the relief hereinafter prayed, and that they and each of them may upon their corporal oath full, true, direct, and perfect answer make to all and singular the premises, and that your honor will by a decree of this honorable court decree:

1st. That all of its entire line of road from Jacksonville to Chattahoochee, and the branches to Monticello and St. Marks, and the lines of road from Fernandina to Cedar Keys and from Waldo
27 to Tampa are covered by the exemption from taxation as provided in the internal-improvement act.

2nd. That its line of road from Jacksonville to Lake City is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of its completion.

3rd. That its line of road from Lake City to Quincy, with the branch from Drifton to Monticello, and the road from Tallahassee to St. Marks, are not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of their completion.

4th. That its line of road from Fernandina to Cedar Keys is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1864, the date of its completion.

5th. That your orator's line of railroad from Waldo to Ocala is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1877, the date of its completion.

6th. That your orator's line of railroad from Ocala to Tampa is not subject to taxation for State or county purposes, and will not be for the full period of thirty-five years from the date of its completion to the waters of Tampa bay.

7th. That your orator's line of railroad from Quincy to Chattahoochee is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1874, the date of its completion.

28 8th. That your orator's lines of road and no part of them are subject to the payment of the tax assessed against them in A. D. 1885 for the years 1879, 1880, and 1881.

That each and every the assessments made by the said William D. Barnes for taxes for State or county purposes on the lines of road of your orator for either and each of the years 1879, 1880, 1881, 1882, 1883, 1884, 1885, and 1886 are illegal and void.

May it please your honor to grant unto your orator the injunction of this court, directed to the said William D. Bloxham, as comptroller, and to John A. Pearce, as sheriff of Leon county, State of Florida, restraining them and each of them from making any levy or sale, or attempting the same, on the property of the lines of your orator's railroad on account of any of the assessments for taxes made thereon for the said years of 1879, 1880, 1881, 1882, 1883, 1884, 1885, or 1886, and from executing or attempting to execute any warrants of sale issued under said assessments or either of them, and restraining the said William D. Bloxham from hereafter making any further assessments for such purposes or for any purposes of taxation upon the lines of your orator's road which is upon the routes between Jacksonville and Chattahoochee, or the branches therefrom to Monticello or St. Marks, or on the line from Fernandina to Cedar Keys, or from Waldo to the waters of Tampa bay, until the expiration of thirty-five years from the date of the completion of the said several lines.

And that it be decreed that the said William D. Bloxham do pay to your orator all moneys which have been so improperly collected

on the account of said assessments for taxes, and for such other
29 and further relief as to equity may appertain.

May it please your honor to grant unto your orator the State's writ of subpœna, to be directed to the said defendants, William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, commanding them, on a day to be named, to appear before this court and make full answer under oath to all and singular the premises, and to abide the decree of the court herein.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY,
By JOHN A. HENDERSON, *Vice-President.*

JOHN A. HENDERSON,
Solicitor for Complainant.

STATE OF FLORIDA, }
Leon County. }

Personally came John A. Henderson, who, being duly sworn, says that he is the vice-president of the complainant company; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true as to all matters stated therein upon knowledge, and that as to all statements on information and belief therein made he believes them to be true.

JOHN A. HENDERSON.

Subscribed and sworn to before me this Nov'r 2, A. D. 1892.
COUNCIL A. BRYAN,
Clk Ct. Ct. Leon Co., Fla.

30 EXHIBIT A.

Copied from the assessment-roll of the several counties named, as made for the year A. D 1884, except as herein stated, and giving therefrom the style of the "name of tax-payer," description of property, aggregate value, and total amount of tax assessed for State and county purposes.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
Gadsden.	Florida Railway & Telegraph Navigation Company:			
	35 miles of main track, valued at $7,000 per mile	$245,000		
	4⅙ miles of side track, valued at $3,500 per mile	1,610		
	Pro rata value of rolling stock, including engines, cars, and appurtenances	17,603		
	20 miles of telegraph lines, valued at $50	1,000		
			$265,293	$3,183.51

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
31				
Leon....	Florida Railway & Navigation Company:			
	Length of main track, 26 miles...	$182,000		
	Length of branch road, 11 miles. Including right of way and road-bed.	44,000		
	Side track, $1\frac{42}{100}$ & main track....	4,900		
	Pro rata of rolling stock, including value of locomotives, engines, passenger & freight, construction, and all other cars and appurtenances.	12,000		
	C. F. C lots 70 & 71, 72, 73, 87, 88, & 90	(300)		
	With the sections and other lands.	(800)		
	All the sec. houses and warehouses, &c., &c., as therein described.	(300)		
	Valuation of town or city lots and improvements	12,500		
	Value of all other personal property (except animals)..	23,693		
			280,993	4,355.38
Wakulla..	Florida Railway & Navigation Company.....		45,192	564.90
32				
Jefferson .	Florida Railway & Navigation Company:			
	18 miles main track..	$12,600		
	4 miles main track	16,000		
	$\frac{54}{100}$ miles side track	1,820		
	Pro rata value of rolling stock, including cars and appurtenances.	11,155		
	1 lot and depot at Mont.....	2,000		
	1 depot at Lloyds.....	2,500		
	Lot at Drifton	305		
	Lot at Williamsburg	500		
	Value of all other personal property (except animals)		160,240	2,163.24
Madison..	Florida Railway & Navigation Company:			
	Total value, including rights of way, road-bed, side track, and main track..			
	Pro rata value of rolling stock, including engines, cars, and appurtenances, 34 miles..	240,065		
	Value of all other personal property (except animals).....	17,175		
			257,240	7,073.60

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
33				
Suwannee.	R. R. F. Railway & Navigation Co.:	(?)		
	25 miles of track	175,000		
	$\frac{44}{100}$ miles side track	1,260		
	Pro rata share R. stock, engines, &c.	12,630		
	Depots Live Oak, Houston, & Welborn	2,780		
			191,670	2,300.05
Columbia.	Florida Railway & Navigation Co.:			
	21 miles main track, $\frac{44}{100}$ side track, and *pro rata* rolling stock	159,219.83		
			159,219.83	2,229.08
Baker...	Fla. Railway & Navigation Co.:			
	(?) (?)		181,245	2,337.46
Duval. ...	Florida Railway & Navigation Co.:			
	Right of way, road-bed, side and main tracks	398,160		
	Personal, rolling stock, *pro rata*	27,830		
			425,990	5,963.87
34				
Nassau....	Florida Railway & Navigation Company:			
	48 miles of main track, valued at 7,000 per mile	336,000		
	$2\frac{44}{100}$ miles of side track, valued at 3,500 per mile (F. & T. included)	8,540		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	24,251		
	Wharf improvement at the foot of Beach St., Fernandina, known as the steamship wharf	3,400		
	Railroad shops in Fernandina, fixtures, machinery, & tools in said shop	4,299		
	Value of all other personal property (except animals)	11,300		
			387,790	4,847.37
Clay.....	Florida Railway & Navigation Company:			
	$6\frac{44}{100}$ miles at 7,000, 40,600; $\frac{24}{100}$ miles side track, valued at 3,500 per mile, $840; *pro rata* rolling stock, engines, cars, &c	44,370	.....	510.27
Bradford.	Fla. R'y & N. Co.:			
	Total length of main track in Bradford Co., 20 miles. Total value of road, including right of way, road-bed, side track, & main track	143,045		

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
	Pro rata value of rolling stock, including value of locomotives, engines, passenger, freight, platform, construction, and other cars and appurtenances..	10,205	153,250	1,477.51
35				
Alachua..	Railroad, Florida Railway & Navigation Co.:			
	Miles of main track at 7,000 per mile.....	406,000		
	Miles of side track, 3,500 per mile.	6,790		
	Value of all other personal property (except animals)..	29,310	442,100	7,073.60
Levy.....	Florida Railway & Navigation Co.:			
	$39\frac{8}{100}$ miles main track, valued at 7,000 per mile	278,600		
	$\frac{63}{100}$ miles side track, valued at 3,500 per mile.....	2,205		
	Total value, including road-bed, right of way, side track, & main track.	280,805		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,101.15		
	Aggregate amount.....	300,913.15	300,913	3,310.04
Marion...	$40\frac{41}{100}$ main track, at 7,000.....	283,290		
	$1\frac{1}{100}$ side track, at 3,500	3,535		
	Total value, including right of way, road bed, side & main tracks..	286,825.00		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,446.67		
	Aggregate amount to be assessed..	307,271.67	307,272	4,301.81
36				
Sumter....	Florida Railway and Navigation Company:			
	Certain lands (described, but not levied on)			
	20 miles track	140,000		
	$\frac{46}{100}$ side track.....	1,610		
	Pro rata rolling stock.	10,110	151,720	18,20.64

37 Copy.

B.

STATE OF FLORIDA:

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *April* 24, 1885.

State of Florida to Samuel C. Tucker, sheriff of Alachua county, Greeting:

You are hereby commanded to collect from the Florida Railway and Navigation Company, by levy and sale, in the same manner as now provided by law for the sale of property under execution from the circuit court, of the shops, fixtures, rolling stock, or any part thereof, or of the entire road or roads belonging to or owned by said company, the sum of one hundred and forty thousand and seventy-three dollars and sixty-one cents ($140,073.61), that being the amount of State and county taxes assessed against the Tropical Peninsular, Florida Transit, Florida Transit and Peninsular, Florida Central, Jacksonville, Pensacola & Mobile, Florida Central and Western, and Florida Railway and Navigation Company's railroads, all now owned or operated by the Florida Railway & Navigation Company, for the years 1879, 1880, 1881, 1882, 1883, and 1884, which are now due and unpaid, together with the *cash* (costs) and expenses of sale, and you will make due return hereof to this office.

Witness my hand and seal of office this the 24th day of April, A. D. 1885.

W. D. BARNES,
Comptroller.

38 Copy.

C.

STATE OF FLORIDA:

140,073.61
738.86

$140,812.47

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *May* 28, 1885.

Received of the Florida Railway and Navigation Company the sum of one hundred and forty thousand and seventy-three $\frac{61}{100}$ dollars, assessed against the several railroads described in the following advertisement of the properties of the same, as the State and county taxes thereon, as therein expressed, and received also the sum of seven hundred and thirty-eight $\frac{86}{100}$ dollars as the costs and expenses of such collection. (This does not include the taxes assessed against the Fernandina and Jacksonville Railroad property for the year A. D. 1883.)

Which said payment is made by the said Florida Railway and Navigation Company because of the levy and threatened sale, as indicated in said advertisement, and to avoid the sacrifice and injury which will be done to its property by such sale, and under protest that the amount so levied and assessed is not the proper amount due on said account by the said company, but is in excess thereof, and that this payment is not voluntary, but is made under duress, and that it reserves to itself the right to recover such excess of payment as shall be found to have been herein made in any manner that it shall be available whereby so to do. This payment is made for the said Florida Railway and Navigation Company by Mr. J. Aug. Johnson, attorney.

(Signed) W. D. BARNES,
[L. S.] *Comptroller.*

39 Copy.

D.

Warrant.

COMPTROLLER'S OFFICE, STATE OF FLORIDA.

To John A. Pearce, sheriff of Leon county, State of Florida, Greeting:

You are hereby commanded to collect from the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road or such part thereof as may be located in this State, belonging to or operated by said company, the sum of ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), that being the amount of State and county taxes assessed against the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, now constituting the Florida Central and Peninsular railroad, under the provisions of chapter 3558, Laws of Florida, for the years eighteen hundred and seventy-nine (1879), eighteen
40 hundred and eighty (1880), and eighteen hundred and eighty-one (1881), which said amount is now due and unpaid, together with the costs and expenses of sale as provided by law, and you will make due return thereof to this office.

Witness my hand and seal of office this the fifth (5th) day of October, A. D. 1892.

[SEAL.] W. D. BLOXHAM,
Comptroller.

(*Return.*)

Copy.

Came to hand this 5th day of October, 1892, & executed the within by levying on the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, the road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chattahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, this the 5th day of Oct., A. D. 1892.

(Signed) JOHN A. PEARCE,
Sheriff Leon Co.

Levy & ret., 1.10.

41 THE WEEKLY TALLAHASSEEAN

and

LAND OF FLOWERS.

Published every Thursday, at the office, Monroe street, Tallahassee, Florida.

Thursday, October 27, 1892.

Sheriff's Sale.

Under and by virtue of a warrant issued by Hon. W. D. Bloxham, comptroller of the State of Florida, bearing date of October 5th, 1892, to me directed as sheriff of Leon county, against the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, for State and county taxes due and unpaid for the years 1879, 1880, and 1881, for ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), together with the costs and expense, commanding me to collect by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road, or such part thereof as may be located in this State, belonging to or operated by said company, I have this day levied upon and will expose for sale to satisfy said warrant, in front of court-house door, in the city of Tallahassee, during legal hours of sale, on the 1st Monday of November, being 7th day of said month, being legal-sales day, the
42 following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway

and Navigation Company, embracing the lines of divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, to wit: The road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chattahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, levied upon as the property of the Florida Central and Peninsular Railroad Company, embracing the lines or divisions thereof formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

This 5th day of October, A. D. 1892.

JOHN A. PEARCE,
Sheriff Leon County.

31–4w.

43 *Statement Showing the Amount of Taxes Collected by the Comptroller from the Defaulting Railroad Companies, as Required by Law, and also Showing how the Funds so Received were Disbursed.*

Florida Railway and Navigation Company.

Received from said company on account of—	State taxes.	County taxes.
Gadsden county, taxes 1881, 1882, 1883 and 1884	$4,907 31	$7,395 39
Leon county, taxes 1882, 1883 and 1884	4,174 09	9,448 04
Wakulla county, taxes 1882, 1883 and 1884	933 67	1,460 03
Jefferson county, taxes 1881, 1882, 1883 and 1884	3,858 42	8,091 50
Madison county, taxes 1882, 1883 and 1884	4,373 18	9,922 32
Suwannee county, taxes 1882, 1883 and 1884	3,046 43	5,143 53
Columbia county, taxes 1881, 1882, 1883 and 1884	3,378 18	6,459 39
Baker county, taxes 1882, 1883 and 1884	3,072 51	5,837 67
Duval county, taxes 1879, 1880, 1881, 1882, 1883 and 1884	8,463 96	13,489 91
Nassau county, taxes 1882, 1883 and 1884	6,321 82	11,662 78
Clay county, taxes 1882, 1883 and 1884	802 12	1,131 47
Bradford county, taxes 1882, 1883 and 1884	2,342 80	1,722 75
Alachua county, taxes 1881, 1882, 1883 and 1884	10,308 84	21,897 76
Levy county, taxes 1882, 1883 and 1884	4,471 04	5,980 68
Marion county, taxes 1882, 1883 and 1884	4,968 49	9,170 64
Sumter county, taxes 1883 and 1884	1,945 63	3,891 26
	$67,368 49	$122,705 12
Disbursed as follows:		
To the several counties above named		$120,692 29
For commissions to attorneys, as provided by law, 15 per cent. on the taxes of 1879, 1880 and 1881	$1,377 52	2,012 83
Paid into State treasury	65,990 97	
	$67,368 49	$122,705 12

Statement Showing the Amount of Taxes Assessed under the Provisions of Chapter 3558, Laws of Florida, upon Railroads and Property Thereto Belonging which were Omitted from the Assessment-rolls of 1879, 1880, and 1881.

Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

Counties.	Valuation.	General revenue.	General school tax.	Total taxes for State purposes.	County revenue.	County school.	County special.	Total taxes for county purposes.
Suwannee, taxes 1879, 1880 and 1881..	$163,580	$3,108 02	$490 74	$3,598 76	$1,962 96	$1,226 85	$981 48	$4,171 29
Alachua, taxes 1879 and 1880	250,000	3,000 00	500 00	3,500 00	2,000 00	1,250 00	1,000 00	4,250 00
Baker, taxes 1879, 1880 and 1881	156,960	2,982 24	470 88	3,453 12	1,256 68	1,098 72	1,098 72	3,453 12
Bradford, taxes 1879, 1880 and 1881..	131,410	2,496 79	394 23	2,891 02	1,051 28	1,051 29	262 82	2,365 39
Clay, taxes 1879, 1880 and 1881.....	39,720	754 68	119 16	873 84	417 06	357 48	218 46	993 00
Columbia, taxes 1879 and 1880.....	137,880	1,654 56	275 76	1,930 32	1,103 04	689 40	551 52	2,343 96
Gadsden, taxes 1879 and 1880.....	228,880	2,746 56	457 76	3,204 32	1,831 04	915 52	915 52	3,662 08
Jefferson, taxes 1879 and 1880	130,560	1,566 72	261 12	1,827 84	783 36	261 12	2,252 16	3,296 64
Levy, taxes 1879, 1880 and 1881.....	255,390	4,852 41	766 17	5,618 58	2,043 12	2,298 52	.....	4,341 64
Leon, taxes 1879, 1880 and 1881.....	206,200	3,917 80	618 60	4,536 40	2,474 40	1,546 50	3,402 30	7,423 20
Madison, taxes 1879, 1880 and 1881...	223,270	4,242 13	669 81	4,911 94	2,344 34	1,562 90	3,907 23	7,814 47
Nassau, taxes 1879, 1880 and 1881 ..	285,500	5,424 50	856 50	6,281 00	3,426 00	2,569 50	1,998 50	7,994 00
Wakulla, taxes 1879, 1880 and 1881...	30,120	572 28	90 36	662 64	361 44	240 96	180 72	783 12
	$2,239,470	$37,318 69	$5,971 09	$43,289 78	$21,053 72	$15,068 76	$16,769 43	$52,891 91
Savannah, Florida and Western Railroad Company.								
Hamilton, taxes 1879 and 1880.....	$56,000	$560 00	$112 00	$672 00	$336 00	$420 00	$84 00	$840 00
Suwannee, taxes 1879 and 1880.....	32,000	320 00	64 00	384 00	256 00	160 00	128 00	544 00
Totals	$88,000	$880 00	$176 00	$1,056 00	$592 00	$580 00	$212 00	$1,384 00

45 Endorsed: Filed Nov. 2nd, 1892. C. A. Bryan, clerk.

Whereupon a subpœna in chancery issued from the clerk's office aforesaid, which, with the return and endorsements thereon, is in the words and figures following, to wit:

THE STATE OF FLORIDA:

To William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, State of Florida, Greeting:

You are hereby commanded and strictly enjoined that, laying all other business aside and notwithstanding any excuse, you personally be and appear before the judge of our circuit court for the county of Leon on the 1st Monday of December next, wherever the court may then be, to answer a bill of complaint exhibited against you in our said court by the Florida Central & Peninsular Railroad Company, and to do further and receive what our said court shall have considered in that behalf.

And this you are not to omit under a penalty of five hundred dollars.

[SEAL.] Witness the Honorable John W. Malone, judge of said court, this the 2nd day of November, in the year of our Lord 1892.

COUNCIL A. BRYAN, *Clerk*.

Endorsed.

The sheriff of Leon county being one of the defendants in this cause, the within writ of subpœna came to my hands as justice of the peace in and for said county for service on the 2nd day of November, A. D. 1892, and I solemnly swear that I served the
46 within writ of subpœna as directed by exhibiting the original and by delivering a true copy thereof to each of the within-named defendants, as follows: To defendant John A. Pearce, sheriff, &c., on the 2nd day of November, A. D. 1892, and to defendant Wm. D. Bloxham, comptroller, &c., on the 3rd day of November, A. D. 1892.

R. A. WHITFIELD,
Justice of the Peace.

Subscribed and sworn to before me this 3d day of Nov., A. D. 1892.

COUNCIL A. BRYAN, *Clerk*.

And afterwards, to wit, on the eleventh day of November, in the year of our Lord one thousand eight hundred and ninety-two, by consent of counsel for defendant, the plaintiff filed amendments to its bill of complaint in the words and figures following, to wit:

(See page 18 of record and page 20 of original bill.)

And afterwards, to wit, on the second day of January, in the year of our Lord one thousand eight hundred and ninety-three, defendants, by their attorney, filed in the clerk's office aforesaid their answer to the said bill of complaint and amendments thereto in the words and figures following, to wit:

47 Circuit Court of the State of Florida, Second Judicial Circuit, Leon County. In Chancery.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

The Joint Answer of William D. Bloxham, Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.

The defendants, now and at all times hereafter saving and reserving to themselves and to the State of Florida, for which they are acting in the matter of the said bill complained of, all and all manner of benefit, advantage of exception, and otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, and especially all advantage of exception to this honorable court's jurisdiction and power to grant the relief prayed as to the collection of $140,812.47 from complainant by William D. Barnes, comptroller of the State of Florida, in the year A. D. 1885, as taxes due by the Florida Railway and Navigation Company to the State of Florida for the years of 1881, '2, '3, & '4, for answer thereto or so much thereof as these defendants are
48 advised it is material or necessary for them to make answer to, answering, say:

These defendants admit that complainant is a corporation duly organized under the laws of Florida, but have not sufficient information to say whether the railroads named in complainant's bill, A, B, C, D, E, F, G, J, K, M, were or are constructed as required by their charters and the said internal-improvement act of Florida and the amendments thereto, and demand strict proof of the same.

Defendants, further answering, deny that the State of Florida did not reserve any right to alter or amend or repeal said acts, and defendants deny that there was no law or act inconsistent with the provisions of the internal-improvement act and said acts of incorporation with regard to the tax on railroad property and the exemption thereon, and defendants deny that it was the intent of the legislature or of the people of the State of Florida at that time and since to continue in full force or at all the exemption contained in said internal-improvement act and acts of incorporation during the term prescribed in said acts.

That the act, chap. 3558, Laws of Florida, was not required to specify as liable to taxation the property of the Florida Railway and Navigation Company and its constituents other than in the manner specified in said act, and these defendants deny that the

property of the Florida Railway and Navigation Company and its constituents were in fact exempt from taxation at the time of the passage of said act, and defendants allege and aver that the State officers were authorized to levy upon said property for such taxes.

49 Answering further, defendants deny that the State constitution of 1868 was inconsistent with the Constitution of the United States, and deny that said State constitution abrogated any contract in force between the State and the said railroad companies, as set forth in said bill of complaint.

Defendants deny that the grant of exemption from taxation given said lines of road, as stated in complainant's bill, in aid of construction *were* given by the internal-improvement act without reference or limitation as to the proprietorships therein or to any changes in such ownership; and these defendants, further answering, say that as to so much of complainant's bill as claims that by the acts of the legislature of Florida the property of the complainant and its constituent parts, the Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Florida Railroad Company, the Tallahassee Railroad Company, and the other roads mentioned in complainant's bill and designated as D, F, G, H, J, K, L, M, were exempt from taxation for thirty-five years, and that by reason of the Florida Central and Peninsular Railroad Company purchasing and acquiring the same in the manner and by modes of conveyance as at foreclosure sale and otherwise, as set forth in complainant's bill, that the complainant is exempt in the property as aforesaid from the payment of the taxes demanded by the State of Florida and by these defendants sought to be collected by the levy and proposed sale complained of, these defendants claim all the benefit they could have from a demurrer interposed thereto.

And defendants say that they are advised that if, as claimed by complainant, the legislature of Florida did intend to exempt
50 the property of complainant's line of road built in the lines indicated in the 4th section of the internal-improvement act, and of the Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Florida Railroad Company, the Tallahassee Railroad Company, and embraced in the roads of the Florida Central and Peninsular Railroad Company, from taxation for the term of thirty-five years, the said legislature transcended its constitutional powers, and the said acts cannot be construed or held as exempting the property of the Florida, Atlantic and Gulf Central Railroad —, the Pensacola and Georgia Railroad Company, the Tallahassee Railroad Company, and the Florida Railroad Company, for defendants allege that said exemption was not extended to all railroad companies and their property in the State of Florida.

That defendants are advised and charge that the alleged grant of exemption, if made, was made gratuitously and without consideration, and if there was any consideration it was not such consideration as to preclude the people of Florida and their legislature by their subsequent organic law and legi-*al*tion from subjecting

even the Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Tallahassee Railroad Company, and the Florida Railroad Company to the same burdens as are imposed upon other corporations or natural persons who enjoy the benefits of State and county governments; that even if the said acts cited by complainant's bill did intend and did constitutionally exempt the property of the Florida, Atlantic and Gulf, the Pensacola and Georgia, the Tallahassee, and the Florida Railroad Companies, organized prior to the constitution of 1868,
51 and acquired by the Florida Central and Peninsular Railroad Company, from taxation, as claimed in its bill, these defendants say they are advised that such exemption did not pass by the several mesne conveyances to the complainant, for these defendants aver that by said acts there was only exempted the capital stock, railroad, and other property of the Florida, Atlantic and Gulf Central, the Pensacola and Georgia, the Tallahassee, and the Florida Railroad Companies, and defendants aver that with the exception of a part of the right of way, and probably a portion of the road-bed, and perhaps a few other insignificant items, that the railroad and property upon which the taxes are now sought to be collected are not the same property which was the property of the said Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Tallahassee Railroad Company, and Florida Railroad Company, to which complainant's bill claims exemption attached, and these defendants aver that complainant has not proffered or tendered the tax upon any part of the taxed property.

Defendants, further answering, say that by the alleged transfers, consolidations, and purchase of the various railroads, as set forth in said bill of complaint, the complainant did not become entitled to all the rights, property, privileges, franchises, and immunities and alleged exemptions from taxation of the said railroads so claimed to be exempt from taxation as set forth in complainant's bill; but, on the contrary, these defendants are advised and charge that under the laws of Florida the complainant acquired nothing more than the property purchased by it from the chartered railroads named in complainant's bill, and acquired none of the said railroads'
52 franchises, privileges, or immunities and alleged exemptions from taxation as a railroad corporation duly chartered, empowered to exercise the franchises and enjoy the privileges and immunities thereof in the State of Florida.

Defendants, further answering, say that as to the allegations that the lines of railroad designated as "A," "B," "C," "E" were built, accepted the provisions of the said act according to the provisions of the said act, and were accepted by the trustees of said internal-improvement fund as completed, and as to the allegations that for nonperformance with the requirements of the internal-improvement act in the payment of semi-annual interest the roads mentioned as "A," "B," "E" were bought and afterwards owned and operated, the defendants have not sufficient information to either admit or deny the same and demand strict proof thereof, and especially that said rail-

roads were or are constructed as required by said acts and amendments thereto; and as to the allegations that the Jacksonville, Pensacola and Mobile Railroad Company built the line of road designated as "D," and that the president and directors of the Florida Railroad Company set off the construction of the road between Waldo and Ocala, as alleged, and that the Florida Railroad Company set off to be constructed the road between Ocala and Tampa bay, defendants have no knowledge and demand strict proof.

Defendants, further answering, deny that the Florida Central and Western Railroad Company was by sale of complainant's line between Jacksonville and Chattahoochee and branches to Monticello and St. Marks to Edward J. Reed, and by deed of said Reed, 28th day of February, 1882, invested with all the rights, privi-
53 leges, and immunities covered by said mortgage and of the charters and statutory benefits of the several constituent companies.

These defendants, further answering, say that they deny that by reason of the several consolidations of roads mentioned into the Florida Central and Western Railroad Company, the Florida Transit and Peninsular Company, and the Florida Railway and Navigation Company there was anything in or any existing laws of such property acquired by which they or the complainant herein can claim or receive any immunity or exemption from taxation or the taxes demanded now from them by the State of Florida herein.

And the defendants, further answering, deny that the effect of the legislation in said bill set forth was an exemption of all complainant's lines of road which were built on the lines indicated in the 4th section of the internal-improvement act from taxation as claimed; that the exemption, as aforesaid, was such an immunity as the legislature was not empowered by the constitution of Florida to give and grant, and was and is unconstitutional, null, and void, and was not and is not such an immunity as could or does pass to the complainant through the several conveyances and purchases as set forth in the bill.

Defendants, further answering, deny that the exemption of the said lines of railroad set forth in said bill from taxation for the periods of time alleged became by contract of the State a part and parcel of the property value of said roads, and that this exemption became a part of the value of the property of the railroad which complainant acquired in its acquisition of each and all of its said lines, and deny that this was the law of the property as de-
54 clared by the courts of this State when the Florida Railway and Navigation Company acquired the same, and that as to so much of complainant's bill as sets forth the claim that complainant is exempt from the payment of the taxes demanded by the State of Florida and by these defendants sought to be collected by the levy and proposed sale complained of, these defendants claim all the benefits they could have from a demurrer interposed thereto.

Defendants, answering further, say they deny the charge contained in that paragraph of complainant's bill alleging that neither the internal-improvement act nor acts amendatory thereof, wherein was

granted the alleged exemption, nor the acts under which said lines of road were constructed, contained any reservation of power in the legislature to alter, amend, or repeal the said immunity of exemption from taxation, and that any and every act of the State of Florida attempting to revoke, repeal, or annul the same was violative of complainant's rights as guaranteed by the Constitution of the United States.

Defendants, further answering, say that they deny that the act under which W. D. Barnes, comptroller, claimed to assess back taxes for the years 1879, 1880, and 1881 was not a law of the State of Florida, but aver that it was a law of Florida, and that said act does sufficiently designate and specify the Florida Railway and Navigation Company, because said company embraced such railroad property as designated by said act to have escaped the payment of taxes for the years mentioned, and defendants deny that said act of assessment was in violation of complainant's alleged exemption, and the said act is null and void.

Defendants deny that the assessment made by Wm. D.
55 Barnes, comptroller, as shown by Exhibit "A," was null and void, and to that part of complainant's bill which asks relief as to the $140,812.47 paid to the comptroller, as alleged, these defendants are advised, and so say, that complainant cannot seek a remedy against that payment, if entitled to such, which is hereby denied in this proceeding, but that if complainant was injured and oppressed by compulsion in such payment the relief must be granted by the legislature of Florida, and defendants deny the jurisdiction and power of this honorable court to grant the relief prayed as to such past payment of taxes.

Defendants, answering further, admit that William D. Barnes made assessment on the lines of the Florida Railway and Navigation Company under chap. 3558, Laws of Florida, but defendants deny that said act is illegal or unjust, or that it is unconstitutional and in violation of any contracts and rights of the Florida Railway and Navigation Company, its stockholders and bondholders, and that said act is legal, just, and constitutional.

These defendants, being so advised, deny that the law in force at the time of such assessment prohibited the comptroller and other officials from assessing the property of the Florida Railway and Navigation Company in the manner stated.

These defendants, answering further, deny that a lien was not contemplated in favor of the State of Florida against the Florida Railway and Navigation Company at the time it acquired its line of road, and they are advised, and so allege, that the State of Florida, by a joint resolution of its legislature, on the — day of ——,
56 1881, directed the comptroller and governor to employ counsel to bring suits to collect taxes due, but never up to that time paid by certain lines of railroad in this State, the lines of road of the Florida Railway and Navigation Company being among that number, and the intention of the State of Florida to collect such taxes was made manifest thereby.

To those portions of complainant's bill claiming there was no lien

on the lines of road acquired by the Florida Railway and Navigation Company at such time of acquirement, and that chap. 3558, Laws of Florida, was unconstitutional and void, in that it did not provide for a uniform and equal rate of taxation and did not secure a just valuation and assessment for all classes of property, and that the State's power of taxation was exhausted over the property when the assessment was made, as shown by Exhibit "C," and those portions of complainant's bill denying the right of the State to levy a tax or additional tax on the values of said property of the Florida Railway and Navigation Company, as set forth in complainant's bill, and to those portions of said bill relating to the issue of $10,000,000 of bonds and the disposition of $5,000,000 thereof, and the foreclosure and sale of the properties of the Florida Railway and Navigation Company and the purchase of the same by W. B. Cutting, agent, as showing any reason why the taxes sought to be collected by the levy and proposed sale herein are not due to the State of Florida, these defendants claim all the benefits they could have from a demurrer interposed thereto.

Defendants, being so advised, deny that complainant in this proceeding has any right to recover the $140,812.47 alleged to
57 have been unlawfully collected by said Barnes, comptroller, and deny that the same was unjustly or unlawfully collected.

Defendants admit that chapter 4703, Laws of Florida, was passed and approved as alleged.

Defendants, further answering, admit that under the authority of above act and the acts to which it relates they have seized and levied upon the property of complainant, as shown by the comptroller's warrant annexed to the bill of complaint, to pay the taxes due on the same for the years 1879, 1880, 1881, and legally assessed upon the same for said years, and that they will sell the said property of complainant for the purpose of paying such due and unpaid taxes for said years, as shown by the published notice annexed to complainant's bill, unless the taxes so assessed against the property of complainant for the said years 1879, 1880, 1881 be paid, together with the costs and expenses, before such sale.

And these defendants, further answering, den*ies* all and all manner of unlawful combinations and confederacy wherewith *he is* by said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for *this* defendant- to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of *this* defendant-; all which matters and things *this* defendant- *is* ready and willing to aver, maintain, and prove as
58 this honorable court shall direct, and humbly pray*s* to be hence dismissed with *his* reasonable costs and charges in this behalf most wrongfully sustained.

WM. B. LAMAR,
Attorney General, and
CHAS. B. PARKHILL,
Sol'rs for Defendants.

STATE OF FLORIDA, }
Leon County. }

William D. Bloxham, comptroller of accounts in and for the State of Florida, and John A. Pearce, sheriff in and for said State and county, being duly sworn, says the matters alleged in the foregoing answer of knowledge are true, and those alleged on information they believe to be true.

W. D. BLOXHAM,
Comptroller.
JOHN A. PEARCE,
Sheriff Leon Co., Fla.

Sworn to and subscribed before me this 2nd day of January, A. D. 1893.

B. B. WILSON,
[SEAL.] *Notary Public, State of Florida at Large.*

Endorsed: Filed Jan'y 2nd, 1893. C. A. Bryan, clerk.

59 And afterwards, to wit, on the 6th day of February, in the year of our Lord one thousand eight hundred and ninety-three, the complainant, by its attorney, filed its exception to the answer to the said bill and amendments thereto in the words and figures following, to wit:

Circuit Court, 2d Circuit of Florida, Leon County. In Chancery.

FLORIDA CENTRAL RAILROAD CO.
vs.
WILLIAM D. BLOXHAM, as Comptroller, and JOHN A. PEARCE, as Sheriff, &c.

And now comes the complainant, by its solicitor, and excepts to so much and such parts of the answer of the said defendants, W. D. Bloxham and John A. Pearce, as follows:

1. That the defendants nor either of them have not answered to the best of their information and belief whether the several railroad companies, viz., the Pensacola & Georgia; Florida, Atlantic & Gulf Central; Florida, Florida Peninsular, Tallahassee, and Florida Tropical Railroad Companies or either of them constructed their several lines in accordance with the provisions of the law and of their several charters and of the internal-improvement act of Florida, the said defendant, the comptroller, being himself a member of the board of trustees of the internal-improvement fund created under and for the administration of said last act, and as such comptroller and *ex officio* trustee under said act and so possessed
60 officially of the knowledge or falsity of the allegations thereof in said bill.

2. And the complainant here makes like exception to the answers of the said defendants, and particularly to the answer of the said

defendant, Bloxham, comptroller and *ex officio* trustee of the internal-improvement fund of Florida, that they have not nor has either of them answered to the best of their information and belief whether the trustees of said fund accepted as constructed under their respective charters and in accordance with the said internal-improvement act—

a. The Pensacola & Georgia railroad, being the line from Lake City to Quincy, with branch to Monticello.

b. The Florida, Atlantic & Gulf Central railroad, being the line from Lake City to Jacksonville.

c. The Tallahassee railroad, being the line from Tallahassee to St. Marks.

d. The Florida railroad, being the line from Fernandina to Cedar Keys.

3. And for like reasons complainant excepts to the answers of the said defendants, and particularly to the answer of the said defendant, Bloxham, comptroller, &c., wherein, because the said defendants have not sufficient information to either admit or *say* the same, they have not nor have either of them answered whether—

a. The Jacksonville, Pensacola & Mobile Railroad Company built the line of complainant's road from Quincy to the Chattahoochee river.

b. Whether the Pensacola & Georgia railroad for defaults, as alleged, was seized and sold by the trustees of the internal-improvement fund and when and as in said bill alleged.

c. Whether the Tallahassee railroad for defaults, as alleged,
61 was seized and sold in like manner and when and as in said bill alleged.

d. Whether the Florida, Atlantic & Gulf Central railroad for like defaults was seized and sold when, by, and in manner as in said bill alleged.

e. Whether the Florida railroad for like defaults was seized and sold when, by, and in manner as in his said bill is alleged.

f. Whether the Florida Railroad Company set off the right to build the line of railroad from Waldo to Ocala to the Peninsular Railroad Company under its charter and in accordance with the provisions of the internal-improvement act.

4. And the complain-ts further except- to the said answer of the said defendants for that they have not nor have either of them answered to the best and utmost of their knowledge, information, and belief—

a. Whether the complainant is a corporation organized under the laws of Florida, acquiring its said line of railroad, with all the rights and franchises and privileges of its predecessors and of its original constituent companies, when and in manner as in said bill alleged.

c. When, how, or in what manner the Florida Railway & Navigation Company was organized; whether it was as in said bill alleged or, if otherwise, how so? Nor when it became the owner of said railroad property specified in said bill.

And the complainant demands the judgment of this court

whether the said defendants, W. D. Bloxham, as comptroller,
62 and John A. Pearce, sheriff, &c., shall not make further and full, true, and perfect answer to the best and utmost of their knowledge, information, and belief to all and singular the allegations of said bill of complaint, and particularly unto such allegations as *is* herein referred to.

JOHN A. HENDERSON,
Sol'r for Compl't.

Endorsed: Filed Feb'y 6th, 1893. C. A. Bryan, cl'k.

63 And afterwards, to wit, on the sixth day of March, in the year of our Lord one thousand eight hundred and ninety-three, came the complainant, by its attorneys, and filed in the clerk's office aforesaid a motion setting down hearing on exceptions to answer in the words and figures following, to wit:

In the Circuit Court of the 2nd Judicial Circuit of Florida in and for Leon County. In Chancery.

THE FLORIDA & PENINSULAR R. Co.
versus
WILLIAM D. BLOXHAM, Comptroller, &c., and JOHN A. PEARCE, Sheriff, &c.

Comes now the said complainant, by its solicitor, and sets down for hearing on the 13th inst. or as soon thereafter as the cause can be heard, at Tallahassee, the exceptions of the complainant to the answer of said defendant filed herein on the 6th day of February, A. D. 1893.

JOHN A. HENDERSON,
Sol. for Compl't.

March 6th, 1893.

Endorsed: Filed M'ch 6th, 1893. C. A. Bryan, clerk.

64 And afterwards, to wit, on the twelfth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the certificate of John W. Malone, judge of the 2d judicial circuit of the State of Florida, stating that he was disqualified from hearing and determining such suit, was filed at chambers before the Hon. John F. White, judge of the 3rd judicial circuit of the State of Florida, in the words and figures following, to wit:

In the Circuit Court for Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WM. D. BLOXHAM, as Comptroller, and JOHN A. PEARCE, as Sheriff, etc.

I, John W. Malone, judge of the second judicial circuit of the State of Florida, do hereby certify that I am disqualified from hear-

ing and determining said suit now pending in the circuit court aforesaid by reason of being personally interested in the result thereof. This July 5th, A. D. 1893.

JOHN W. MALONE, *Judge.*

Endorsed: Filed at chambers 12th July, 1893. Jno. F. White, judge 3d judicial circuit. Filed July 28th, 1893. C. A. Bryan, clerk.

65 And afterwards, to wit, on the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said exceptions to the answer of defendant W. D. Bloxham came on to be heard before the Hon. John F. White, judge of the 3d judicial circuit of the State of Florida, and after argument thereon the following ruling of the court was filed in the words and figures following, to wit:

Circuit Court, 2nd Judicial Circuit of Florida, Leon County, Florida.
In Chancery.

FLORIDA CENTRAL RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller, and John A. Pearce, Sheriff. } Exceptions to Answer.

The above-entitled cause *coming* on to be further heard before the undersigned, judge of the third judicial circuit, upon satisfactory evidence of the disqualification of the judge of the second judicial circuit to hear and determine the same, on exceptions herein filed by complainant to the defendants' answer, and was argued by solicitors for complainant and defendant.

On consideration thereof it is considered, ordered, and adjudged as follows, to wit:

First. That complainant's said exceptions numbered one and two respectively be, and the same are in all things hereby, sustained.

Second. That all that part or parts of exceptions numbered three, except the last part, designated by the letter "F," be, and the same is hereby, sustained.

66 Third. That the said last part of said exceptions three, designated by the letter "F," be, and the same is hereby, overruled.

Fourth. That the first part of complainant's fourth exceptions, designated by the letter "A," be, and the same *are* hereby, sustained.

Fifth. That the second part of said exceptions number four, designated by the letter "C," be, and the same is hereby, overruled.

Sixth. That the cost herein abide the final decision of this cause.

Seventh. And on like consideration it is ordered and decreed that the defendants do make — file a full answer to complainant's said bill by rule day, in August, 1893.

Done, ordered, adjudged, and decreed at chambers this the 12th day of July, A. D. 1893.

JNO. F. WHITE,
Judge 3d Judicial Circuit.

Endorsed: Filed July 28th, 1893. C. A. Bryan, clerk.

And afterwards, to wit, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and ninety-three, came the defendants, by their attorney, and filed in the clerk's office aforesaid their further answer in the words and figures following, to wit:

67 In the Circuit Court, 2nd Judicial Circuit of Florida, Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County.

In compliance with the order of the court made herein on the 12th day of July, A. D. 1893, sustaining complainant's exceptions to defendants' answer, for further answer these defendants, William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, say:

That upon information and belief they admit as true the allegations in the plaintiff's bill that the lines of railroad designated as "A," "B," "C," and "E," "F," and "G" were constructed as alleged in said bill, and that they accepted the provisions of the internal-improvement act and were accepted by the trustees of the said internal-improvement fund, as completed, and that the lines of railroad designated as "A," "B," "C," "E" were sold by the trustees of the internal-improvement fund for non-compliance with the provisions of the internal-improvement act for non-payment of semi-annual interest, as alleged in plaintiff's bill, and were purchased by the purchasers named therein, and that the complainants, by the mesne conveyance, as alleged in said bill, afterwards became the owners of the said railroads, but defendants deny that the said purchasers of said railroads or their successors or the plaintiffs
68 thereby acquired any immunities whatever from taxation on said railroads and properties connected therewith.

Defendants also admit upon information and belief that Jacksonville, Pensacola and Mobile Railroad Company constructed the line of railroad from Quincy to Chattahoochee as alleged in the said bill.

They also admit that the complainant is a corporation, organized under the laws of the State of Florida on the 17th day of November, A. D. 1888, and acquired the lines of railroad as alleged in said bill, but they deny that they thereby acquired any immunities from taxation upon said railroads or upon any part thereof.

And having fully answered, these defendants pray to be hence dismissed with their reasonable costs.

W. B. LAMAR,
Attorney General & of Counsel for Defendants.

STATE OF FLORIDA, }
Leon County. }

William D. Bloxham, comptroller of accounts in and for the State of Florida, and John A. Pearce, sheriff of Leon county, in said State, being duly sworn, say that the matters and facts set forth in the above answer are, according to the best of their information and belief, true.

W. D. BLOXHAM,
Comptroller.
JOHN A. PEARCE,
Sheriff Leon Co., Fla.

Sworn to and subscribed before me on this 28th day of July, A. D. 1893.

B. B. WILSON, [SEAL.]
Notary Public, State at Large.

69 Endorsed: Filed July 29th, A. D. 1893. C. A. Bryan, clerk.

And afterwards, to wit, on the second day of September, in the year of our Lord one thousand eight hundred and ninety-three, came the complainant, by its attorney, and filed in the clerk's office aforesaid its replication to the said answer in the words and figures following, to wit:

In Circuit Court of Florida, Second Judicial Circuit, Leon Co. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD CO. }
vs. }
WILLIAM D. BLOXHAM, Comptroller, &c., and JOHN A. PEARCE, Sheriff, &c. }

The replication of The Florida Central and Peninsular Railroad Company, complainant, to the answer of William D. Bloxham, comptroller, &c., and John A. Pearce, sheriff, &c., defendants.

This repliant, saving and reserving unto *him*self all and all manner of advantage of exception to the manifold insufficiencies of the
70 said answer, for replication thereunto saith that *he* will aver and prove *his* said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all

which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* hath already prayed.

— —.

Endorsed: Filed Sept. 2d, 1893. C. A. Bryan, clerk.

And afterwards, to wit, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and ninety-three, submission of the case was filed at chambers before the Hon. John F. White, judge, as aforesaid, in the words and figures following, to wit:

71 In Circuit Court of Florida, Suwannee Co.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY
vs.
W. D. BLOXHAM, Comptroller, and JOHN A. PEARCE, Sheriff of Leon Co.

This cause, pending in Leon circuit court of the second judicial circuit, in which circuit the judge is disqualified, comes up for hearing before this court by agreement of counsel on bill and answer on application for an injunction to restrain the defendants from proceeding to sell the property of the complainant for the taxes assessed in 1885 on the property of the Florida Railway and Navigation Company for the years A. D. 1879, 1880, and 1881.

JOHN A. HENDERSON,
Sol. for Def'ts.

W. B. LAMAR,
Att'y Gen'l and Sol. for Defendants.

Nov. 13th, 1893.

Endorsed: Filed at chambers 13 Nov., 1893. J. F. White, judge. Filed Dec. 1st, 1893. C. A. Bryan, clerk.

72 And afterwards, to wit, on the thirteenth day of November, in the year of our Lord one thousand eight hundred and ninety-three, an agreement of counsel was filed at chambers before the Hon. John F. White, judge as aforesaid, in the words and figures following, to wit:

In the Circuit Court of the Third Judicial Circuit of Florida in and for Suwannee County.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY
versus
WILLIAM D. BLOXHAM, as Comptroller, and JOHN A. PEARCE, Sheriff of Leon County.

This cause having been this day heard on application for an injunction *pendente lite* to restrain the enforcement by sale of the warrant of the comptroller aforesaid of the property of the defendant for certain taxes assessed in A. D. 1885 on certain of its property

then *as* the property of the Florida Railway & Navigation Company (*Co.*) for the years A. D. 1879, 1880, and 1881, and the same having been argued as upon its merits, it is stipulated by the counsel for the respective parties that if the said decision shall be for a refusal of the injunction that thereon a decree may be entered dismissing complainant's bill of complaint, but that the said order or decree shall have the same force and effect as if there had been a temporary injunction which was dissolved by the action of the court. There having been by mutual consent proceedings in accordance with such practice as would have followed an injunction, ex-
73 ception to the absence of a formal writ of injunction is waived in both this court and the supreme courts either of Florida or of the United States—this without prejudice as to the exercise of the full discretion of the court, and a final decree upon the merits may also be entered herein in accordance with its findings.

JOHN A. HENDERSON,
Sol. for Compl't.

W. B. LAMAR,
Att'y Gen'l and Sol'r for Defendants.

Nov. 13th, 1893.

Endorsed: Filed at chambers Nov. 13, 1893. Jno. F. White, judge. Filed Dec. 1st, 1893. C. A. Bryan, cl'k.

And afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and ninety-three, the final decree of the court was filed in the clerk's office aforesaid in the words and figures following, to wit:

In Circuit Court, 2nd Judicial Circuit of Florida in and for the County of Leon. In Chancery.

74 THE FLORIDA CENTRAL & PENINSULAR Railroad Company
vs.
WILLIAM D. BLOXHAM, Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.
} Bill for Injunction & Relief.

The above-entitled cause, coming on to be finally heard by the undersigned judge of the 3rd judicial circuit (the judge of the 2nd judicial circuit being disqualified), was heard upon bill and answer, and after argument by John A. Henderson, solicitor for the complainant, and William B. Lamar, attorney general for the State of Florida, solicitor for the defendants, and the court, being fully advised of its opinion herein, doth hereby order, adjudge, and decree as follows, to wit:

1st. That the several lines of railroad now owned by complainant and described in said bill of complaint, to wit, "the line of railroad from Lake City to Quincy, Florida, with branches to Monticello and St. Marks, Florida; the line of railroad from Lake City to Jacksonville, Florida; the line of railroad from Fernandina to Cedar Keys,

Florida; the line of railroad from Waldo to Ocala, Florida, and the line of railroad from Ocala to Tampa bay, Florida," are and were in A. D. 1885 each and all subject to taxation as other property in the State of Florida, even though said lines of railroad were built on the lines indicated by the general internal-improvement act of A. D. 1855–'6, chap. 610, Laws of Florida, and under the provisions
75 contained in said general internal-improvement act and at the time or times severally alleged in complainant's bill.

2nd. That the several lines of railroad aforesaid, with the branches aforesaid, were not exempt from taxation for the years A. D. 1884, A. D. 1883, and A. D. 1882, and that the taxes thereon, demanded of the Florida Railway and Navigation Company thereon, under an assessment made in A. D. 1885, and paid under protest as alleged by complainant, were lawfully exacted from and collected from said company, notwithstanding portions of some of the aforesaid lines of railroad or all of the same were constructed under the provisions of the general internal-improvement act of the State of Florida, chap. 610, Laws of Florida, and notwithstanding said lines of railroad were built on the lines indicated thereby and therein.

3rd. That the said lines of railroad properties of complainant are subject to taxation for the year A. D. 1886, and that complainant's prayer that defendants be enjoined from assessing and collecting the same for the year A. D. 1886 be, and the same is hereby, denied.

4th. That the taxes now attempted to be collected on the said several lines of railroad owned by the complainant by the defendant William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, under assessment made thereon in A. D. 1885, by virtue of a statute passed A. D. 1885, chapter 3558, Laws of Florida, on the aforesaid lines of railroad and branches, now the property of the complainant, but which *was* so assessed on the same for the years A. D. 1879, A. D. 1880, and A. D. 1881, and which were assessed then as the property respectively of the Jacksonville, Pensacola and Mobile Railroad, the
76 Florida Central *and* Railroad, and the Transit Peninsular Railroad Companies, were and are not liens on said several lines of railroad for the several years aforesaid for which said assessments were made, and were not and are not assessable against the Florida Railway and Navigation Company; that the said statute under which the assessments were made for the years last aforesaid was a special statute for the collection of general revenue and did not provide or attempt to provide a uniform, equal, and just assessment or collection of taxes for the years A. D. 1879, A. D. 1880, and A. D. 1881, and that so much and that such part of said statute of A. D. 1885, chap. 3558, Laws of Florida, as attempts to provide for an assessment and collection of taxes for the years A. D. 1879, 1880, and 1881 is, as to the complainant's said property, unconstitutional and void, and the State of Florida, by its legislature having repeatedly and expressly limited its right to assess property, omitted from assessment for taxes for more than three years next preceding the assessment thereof the said assessments so made as aforesaid or attempted to be made on the said properties of the complainants

for the years A. D. 1879, A. D. 1880, and A. D. 1881, under the provisions of the act aforesaid, and the said warrant and tax levy is hereby adjudged and decreed to be unequal, unlawful, unconstitutional, and void.

5th. And that the said defendants, the said William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined from selling or attempting to sell the said several lines of railroad of complainants or any part or parts thereof under said assessment
77 for the years A. D. 1879, A. D. 1880, and A. D. 1881, and from in any way or manner interfering with or attempting to collect the said taxes for said years last aforesaid.

5th. That defendants pay the cost of this cause to be taxed by the clerk of the circuit court of Leon county, Florida.

Ordered, adjudged, and decreed at chambers, at Live Oak, in the 3rd judicial circuit of Florida, this the 25th day of November, A. D. 1893.

J. F. WHITE,
Judge of the 3rd Judicial Circuit.

Endorsed: Filed Dec. 1st, 1893. C. A. Bryan, clerk. Ent'd Ch'y O. Book No. 3, page 171, Dec. 1st, 1893. C. A. Bryan, cl'k.

78 And afterwards, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and ninety-four, defendants, by their attorney, applied for and entered their appeal from said decree to the supreme court of the State of Florida, to be held at Tallahassee, on the 12th day of June, 1894, in the words and figures following, to wit:

In the Circuit Court, Second Judicial Circuit of Florida in and for Leon County. In Chancery.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

Comes now the above-named defendants, William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, in Florida, into the clerk's office of said circuit court, by William B. Lamar, as attorney general of Florida, their counsel and solicitor, and enters their appeal from the final decree rendered on the 25th day of November, A. D. 1893, and entered of record by Judge John F. White, judge of the third judicial circuit of Florida, Judge John W. Malone, of the second judicial circuit therein, being disqualified, against them, the said defendants, and in favor of said complainant, to the ensuing term of the supreme court of the State

of Florida, to be held at Tallahassee, in said State, commencing on the twelfth day of June, A. D. 1894.

79 W. B. LAMAR,
As Attorney General and Counsel and Solicitor for Defendants.

Tallahassee, May 1st, 1894.

Endorsed: Filed May 1st, 1894. C. A. Bryan, cl'k. Ent'd Ch'y O. Book No. 3, page 197. C. A. Bryan, cl'k.

STATE OF FLORIDA, }
County of Leon. }

I, Council A. Bryan, clerk of the circuit court of the State of Florida, second judicial circuit, in and for the county of Leon, do hereby certify that the foregoing pages, numbered from one to seventy-three, inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the case of The Florida Central and Peninsular Railroad Company, plaintiff, and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, defendants, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the 1st day of May, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL.] COUNCIL A. BRYAN,
Clerk of the Circuit Court for the County of Leon.

80 And afterwards, to wit, on the 12th day of June, A. D. 1894, came the appellants and filed herein their petition of appeal from the decree of the said circuit court of the State of Florida; which said petition of appeal is in the words and figures as follows, to wit:

In the Supreme Court of Florida, June Term, 1894.

WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR RAILROAD Company, Appellee.
} Petition of Appeal.

Comes now appellants, by W. B. Lamar, as attorney general, and files their assignment of errors and say that in the record and proceedings herein manifest error has intervened, to their prejudice, and by way of assignment of errors aver:

1. That the circuit court erred in decreeing in the 4th paragraph of its final decree rendered below in this cause that the taxes attempted to be collected as set out in said decree and for the years named therein were not assessable against the several lines of railroad described therein, and that the statute under which the assess-

ments named in said decree were made was as to the property therein also named unconstitutional and void, and in further rendering its final decree that the assessments, warrant, and tax levy set out and described in said decree were unequal, unlawful, unconstitutional, and void.

2. The court erred in rendering its final decree and by the
81 same perpetually enjoining these appellants from selling or attempting to sell the said several lines of railroad or any part or parts thereof of the complainant company for the taxes assessed against them for the years 1879, 1880, 1881, as set out in the 5th paragraph of said final decree.

3rd. That the court erred in adjudging the costs against these appellants.

Wherefore appellants pray that said orders and decrees in the matters above set forth be reversed and annulled, and that this court render the decree upon the pleadings which the circuit court should have rendered therein.

W. B. LAMAR,
Attorney General and Solicitor for Appellants.

And on the same day, to wit, the 12th day of June, A. D. 1894, came the Florida Central and Peninsular Railroad Company, by counsel, and filed herein its assignment of errors from the decree of the circuit court of the State of Florida; which said assignment of errors is in the words and figures as follows, to wit:

82 In the Supreme Court of Florida, to June Term, 1894.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellant,
vs.
WM. D. BLOXHAM, as Comptroller of Florida, and JOHN A. Pearce, as Sheriff of Leon County, Appellees.

To the honorable the judges of said court:

Whereas in the hearing and in the final decree entered in the above-entitled cause at Live Oak by the Honorable John F. White, judge of the circuit court of the 3rd judicial circuit of Florida, sitting therein, vice the Honorable John W. Malone, judge of the circuit court of the 2nd judicial circuit of Florida, disqualified (the cause being one pending in the Leon circuit), there was alleged error to the prejudice of the appellant, it is hereby prayed that this court take jurisdiction of this appeal in said cause and review the orders and decrees therein as above made and entered and render judgment thereof, that right may be done in the premises, and the appellant makes as error the following assignments:

First Assignment of Error.

The honorable circuit court in its final decree erred in decreeing as it did "that the several lines of railroad now owned by com-

plainant and described in said bill of complaint, to wit, 'the line of railroad from Lake City to Quincy, Florida, with branches to
83 Monticello and St. Marks, Florida; the line of railroad from Lake City to Jacksonville, Florida; the line of railroad from Fernandina to Cedar Keys, Florida; the line of railroad from Waldo to Ocala, Florida, and the line of railroad from Ocala to Tampa bay, Florida,' are and were in A. D. 1885 each and all subject to taxation as other property in the State of Florida, even though said lines of railroad were built on the lines indicated by the general internal-improvement act of A. D. 1855–'6, chap. 610, Laws of Florida, and under the provisions contained in such general internal-improvement act, and at the time or times severally alleged in complainant's bill."

Second Assignment of Error.

The said court in its said final decree erred in also decreeing 'that the several lines of railroad aforesaid, with the branches aforesaid, were exempt from taxation for the years A. D. 1884, A. D. 1883, and A. D. 1882, and that the taxes thereon, demanded of the Florida Railway and Navigation Company thereon, under an assessment made in A. D. 1885 and paid under protest as alleged by complainant, were lawfully exacted and collected from said company, notwithstanding portions of some of the aforesaid lines of railroad or all of the same were constructed under the provisions of the general internal-improvement act of the State of Florida, chap. 610, Laws ot Florida, and notwithstanding said lines of railroad were built on the lines indicated thereby and therein."

Third Assignment of Error.

The said court in its said final decree erred in also decreeing "that the said line of railroad properties of complainant are subject to taxation for the year A. D. 1886, and that complainant's
84 prayer that defendants be enjoined from assessing and collecting the same for the year A. D. 1886 be, and the same is hereby, denied."

And the appellant will ever pray, &c.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, *Appellant*,
By JOHN A. HENDERSON, *Its Solicitor.*

Whereupon came the parties, both appellants and appellee, in said cause, by their respective counsel, and submitted their cause to the said supreme court upon the said transcript of the record and oral arguments.

And at a subsequent day, to wit, on the 19th day of March, A. D. 1895, judgment was rendered by the said supreme court of the State of Florida in words and figures as follows, to wit:

85 Supreme Court of Florida, January Term, A. D. 1895.

W. D. Bloxham, Comptroller, and John A. Pearce, Sheriff, Appellants,
vs.
Florida Central and Peninsular Railroad *Company, Appellee.*

Upon Appeal from a Decree of the Circuit Court within and for the County of Leon.

This cause having been submitted to the court at a previous term thereof upon a transcript of the record of the decree aforesaid and the argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is error in the said decree; it is therefore considered, ordered, and decreed by the court that the said decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing an injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct a return of the taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, be, and is hereby, affirmed, except that portion which holds the line of railroad of said appellee company from Ocala to Tampa subject to taxation aforesaid. The said decree be, and is hereby, reversed in so far as it makes subject to taxation for the years named that portion of the line of railroad of said appellee company from Ocala to Tampa, described in the bill of complaint as the line from Wildwood to Plant City and the line from
86 Plant City to Tampa. So much of said decree as holds that the statute under which the assessments were made and under which proceedings are being taken by the appellants to collect taxes of the appellee company is a special statute for the collection of general revenue is unconstitutional and void be, and is hereby, reversed. So much of the decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, 1881, and which enjoins the appellants from selling or attempting to sell the same, under the assessment aforesaid, or any part thereof, for the said taxes of said years, or from in any manner interfering with or attempting to collect said taxes, be, and is hereby, reversed and the cause is remanded for further proceedings in accordance with the opinion of the court filed herein, and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of seventy-three dollars and thirty cents, all of which is ordered to be certified to the court below.

MILTON H. MABRY,
Chief Justice.

87 And afterwards, to wit, on the 16th day of April, A. D. 1895, came the appellee, by counsel, and entered and submitted to the court its motion for leave to file a petition for a rehearing in the words and figures as follows, to wit:

W. D. BLOXHAM, Comptroller, *et al.*, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR R. R. Co., Appellee.

Comes now the appellee, by its solicitor, and moves the court for leave to file a petition for rehearing in the above-entitled cause on or before the 20th day of May, 1895.

JOHN A. HENDERSON,
Sol'r for Appellee.

Whereupon, upon the same day, to wit, the 16th day of April, A. D. 1895, the following order of the court was entered granting the said motion in the words and figures as follows, to wit:

W. D. BLOXHAM and JOHN A. PEARCE, Appellants,
vs.
FLORIDA CENTRAL & PENINSULAR R'Y Co., Appellee.

88 Upon motion, it is ordered that counsel for the appellee may have until the twentieth day of May next to file a petition for a rehearing in this cause.

And afterwards, to wit, on the 20th day of May, A. D. 1895, came the appellee, by counsel, and submitted to the court its petition for a rehearing in the words and figures as follows, to wit:

In the Supreme Court of Florida, January Term, 1895.

W. D. BLOXHAM, Comptroller, and JOHN A. PEARCE, Sheriff, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

The appellee, by its counsel, John A. Henderson, presents hereby a petition that a rehearing be had of this cause.

The petition asks for a rehearing on the following grounds:

For that while the court holds in its opinion, when the time for the assessment and collection of taxes has passed and the taxing statute has affixed no lien to the property and the State has made no assessment or taken any steps to collect the same, that real estate (railroads, for instance) cannot be pursued for back taxes when it has gone into the hands of innocent purchasers for value.

And the court also held that the Florida Railway and Navigation Company, against which company the assessment was made under the act of 1885 for the years 1879, '80, '81, was not such in-
89 nocent purchasers for value, although it was the admitted fact of the case that the Florida Railway and Navigation Company was organized on the 29th February, 1884, by the consolidation of several companies, which were some of them the result of prior consolidations between 1881 and 1884, which consolidations were made by radical changes in the holdings of the capital stock

of said consolidated companies, and that with each and every of such changes and consolidations parties not before interested in the one and the other of such constituent companies thus became *bona fide* holders of legal estates in such companies from the respective dates of said consolidations and changes, and that such changes of holdings were equal to more than one-half in value of each and every of said properties.

The contention in support of the right to collect the taxes under the act of 1885 from the Florida Railway and Navigation Company, in the pleadings and in the court below, differing with this court, was that the State could pursue real estate for back taxes when it had gone into the hands of innocent purchasers for value, and while it is conceded that the case was before this court practically for a rehearing, the petitioner respectfully presents that the court erred in its conclusion as to the facts of the history of the railroads and their changes of ownership; that while it is true, as alleged in the bill, that the sale of the roads from Jacksonville to Chattahoochee river was made in 1879 and the property was deeded to the Florida Central and Western Railroad Company after its organization, in February, 1882, if it had been anticipated that the articles of association of the Florida Central and Western Railroad Company (not in the record) would have been considered in either court for the purpose of showing the connection of the purchasers with the taxed
90 property for the years 1879 to 1881, the facts would have been made to appear that the sale of 1879 was not confirmed until 1882, and that the purchasers at such sale were not let into the possession of the property before confirmation.

And the petitioner further suggests that the court erred in its finding that the line of road from Fernandina to Cedar Keys was subject to taxation for the years of 1879–'80 and '81, and that this court failed to give due consideration to the established fact that the purchasers at the judicial sale made in certain proceedings in the United States court for the northern district of Florida in a suit between one Doggett, receiver, and the Atlantic, Gulf and West Indian Transit Railroad Company organized themselves into a corporation for the holding of their purchased property under the continuing obligations of the act which authorized the claimed exemption, viz., chap. 610, Laws of Florida, and under the prescribed penalty of an annulment of the contract of purchase and the forfeiture of the purchase-money paid in; and petitioner respectfully submits that this sale and transfer was rendered necessary only in the further enforcements of the liens preserved to the trustees of the internal-improvement — of Florida, and ought not to be regarded such alienation as forfeited the exemption from taxation enjoyed by the same people under a different corporate name.

And petitioner respectfully further urges that under the revenue act of 1879, chap. 3099, section- 17 and 45, all taxable property was assessable for taxation for that year against the particular owner on the first day of March of that year; wherefore it urges that this court was in error in holding, as it did, that the State might assess the

taxes for that year against the property in the hands of par-
91 ties who certainly came into the ownership of the property not before September of that year.

Each of the companies had new stock certificates and new officers, the new company taking its holdings as a "grantee receives the estate of his grantor by inheritance, succession, or purchase." Petitioner invokes the consideration of this court as to whether they fully considered the rights of the stockholders of these new companies (more than one-half of which is alleged in the bill to have been new ones not before identified with the prior companies) to the statutory limitation of three years preceding an assessment in the exercise of the power of assessment for omitted taxes.

And if the consolidation was such a change of an old into a new corporation as to render the new company, under the constitution of the State, incapable of enjoying the immunity from taxation enjoyed by its predecessors organized prior to the adoption of the constitution, was there not such a wiping out of the old companies as to make their stock holdings (without which it is impossible to conceive of a corporation) the holding in a company chartered as of the day when the consolidation was completed by filing the papers in the office of the secretary of state, and did not each new stockholder or holder of new stock become entitled to the limitations of all their existing laws.

Respectfully submitted.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY,
By JOHN A. HENDERSON, *Its Solicitor.*

92 And afterwards, to wit, on the 10th day of June, A. D. 1895, an order was entered denying a rehearing in the words and figures as follows, to wit:

W. D. BLOXHAM, Comptroller, and JOHN A. PEARCE, Sheriff, Appellants,
vs.
FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

A petition for a rehearing having been filed in this cause, and the same having been considered, it is ordered that the prayer of the petition be, and is hereby, denied.

And afterwards, to wit, on the 12th day of June, A. D. 1895, the supreme court issued its mandate to the circuit court in the words and figures as follows, to wit:

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff

and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were
93 defendants, the decree and order of said circuit court were rendered November 25th, A. D. 1893, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas at the January term of said supreme court, holden at Tallahassee, A. D. 1895, the said cause came on to be heard before the said supreme court on the said transcript of the record and was argued by counsel, in consideration whereof it was considered by said supreme court that the said decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing an injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct a return of the taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, be, and is hereby, affirmed, except that portion which holds the line of railroad of said appellee company from Ocala to Tampa subject to taxation — aforesaid:

The said decree be, and is hereby, reversed in so far as it make- subject to taxation for the years named that portion of the line of railroad of said appellee company from Ocala to Tampa, described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa. So much of said decree as holds that the statute under which the assessments were made and under which proceedings are being taken by the appellant to collect taxes of the appellee company is a special statute for the collection of general revenue is unconstitutional and void, be, and is hereby, reversed. So much of the decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein was not assessable against the Florida Railway and Naviga-
94 tion Company for the years 1879, 1880, and 1881, and which enjoins the appellants from selling or attempting to sell the same under the assessment aforesaid or any part thereof for the taxes of said years, or from in any manner interfering with or attempting to collect said taxes, be, and is hereby, reversed, and the cause is remanded for further proceedings in accordance with the opinion of the court filed herein; and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of seventy-three dollars and thirty cents; therefore

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable Milton H. Mabry, chief justice of said supreme court, at Tallahassee, this 12th day of June, A. D. 1895.

JAMES B. WHITFIELD,
Clerk Supreme Court, State of Florida.

[SEAL.]

95 And afterwards, to wit, on the 4th day of May, A. D. 1896, at a regular term of the supreme court of the State of Florida, came the appellants, William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, by counsel, and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and order of the circuit court of Florida for Leon county, pursuant to an appeal entered in the circuit court in the case aforesaid on the 6th day of April, 1896, in the words and figures as follows, to wit:

Transcript of record of proceedings in the circuit court of Leon county, Florida, in the suit of Florida Central and Peninsular Railroad Company, plaintiff, *vs.* William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, defendants, therein lately pending.

On the 24th day of September, 1895, the plaintiff filed its petition to file a supplemental bill in the nature of a bill of review in the words and figures following:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
versus
WILLIAM D. BLOXHAM, as Comptroller, &c., and JOHN A. PEARCE, as Sheriff of Leon County.

96 To the honorable the judge of the circuit court of the 3rd judicial circuit of Florida, sitting in place of Hon. John W. Malone, judge of the second circuit aforesaid, disqualified:

The petition of The Florida Central and Peninsular Railroad Company, the above-named complainant, respectfully showeth that on or about the 2nd day of November, A. D. 1892, your petitioner filed its bill of complaint in the circuit court of Leon county aforesaid against William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, Florida, to establish the claim of the petitioner to the exemption of its railroad property in the State of Florida from taxation for State, county, and municipal purposes, based upon the statute laws of said State, and especially upon the legislative act thereof approved January 6th, 1855, and generally known as the "internal-improvement act," and for the recovery of a sum of money, to wit, of one hundred and forty thousand eight hundred and twelve and $\frac{47}{100}$ dollars ($140,812.47), therein alleged to have been illegally collected from a railroad company preceding the petitioner in the ownership of its present property, to whose rights thereto petitioner succeeded, for the State of Florida by duress and over the protest of said predecessor company, and to enjoin the collection of a further sum of ninety-six thousand one hundred and eighty-one and $\frac{69}{100}$ dollars ($96,181.69), or thereabout, upon an alleged and void assessment made by the comptroller of Florida on the

18th day of October, 1885, against the Florida Railway and Navigation Company upon the railroad property, now of petitioner, then of the said Florida Railway and Navigation Company, for the taxes for State and county purposes for the years 1879, 1880, and 1881, therein alleged to be due upon warrant of Bloxham, comptroller, and by levy thereunder by Pearce, as sheriff, attempted to be had and done
97 by the unlawful seizure and sale of the railroad of petitioner, and praying that it be decreed that the exemption to the petitioner of its railroad property from taxation for State, county, and municipal purposes for a then and now unexpired period inured to and continued to exist in favor of petitioner, and that the defendant Bloxham be decreed to refund to petitioner the aforesaid sum of $140,812.47 illegally demanded of and collected from the owners of the aforesaid railroad property, with interest thereon from the date of such collection, and that the defendants Bloxham and Pearce, comptroller and sheriff as aforesaid, and each of them, be enjoined by the court from the collection of the said sum of $96,181.69, or any part thereof, by seizure and sale of the railroad of defendant, otherwise, for and on account of the claim for taxes thereon for the years 1879, 1880, and 1881.

And your petitioner further shows that defendants Bloxham and Pearce aforesaid, being served with process of subpœna, appeared to said bill, filed plea, demurrer, and answer thereto, and, upon rulings upon exceptions to such answer, filed amended plea, demurrer, and answer thereto, admitting the existence of the statutory exemption upon certain of the lines of the petitioner's railroad originally, and contending that same — lost by alienation of property by company building the particular part of said road—*i. e.*, that the same was exemption only to the original company and not to the property itself; that petitioner was not entitled to recover the money sued for, as same was due and lawfully collected, and that petitioner's property was liable to the assessment made upon it for the taxes of 1879, 1880, and 1881, and assessed against the F. R. & N. Co. in 1885, when it owned the property without regard to the ownership of same in the years 1879, 1880, and 1881; that hearing was had upon said bill and answer, before your honor, on appli-
98 cation for the injunction hereinbefore prayed for, wherein it was on hearing argued by the parties that the properties of petitioner, to wit, the railroad, etc., which was assessed, as aforesaid, in 1885, against the Florida Railway and Navigation Company for the taxes of 1879, 1880, and 1881, did not belong to the last-named company in either of the years for which said taxes *was* assessed, and contended by petitioner that the Florida Railway and Navigation Company, which was assessed in 1885 for the taxes of 1879, 1880, and 1881, was not the owner of any of such property in 1879, 1880, and 1881, and that the property in the hands of petitioner was not subject to such tax, and by counsel for defendants that it was, under the law, liable thereto, without regard to the ownership thereof during the time of the taxed period.

Whereupon, by agreement, after hearing, as aforesaid, the case was submitted, and it was decided by decree denying to petitioner its

exemption from taxation as claimed, denying its right to recover the money paid by the Florida Railway and Navigation Company, and allowing to it an injunction restraining the comptroller and sheriff from the collection of the taxes for the years 1879, 1880, and 1881 as not having been properly assessed in 1885 against the Florida Railway and Navigation Company.

The parties each appealed to the supreme court of Florida from such decree, the defendants assigning as error in effect that the court improperly held that the assessment for the taxes on the said railroad in 1885, for the taxes of 1879, 1880, and 1881, was not properly made against the Florida Railway and Navigation Company.

And that afterwards, on the 19th day of March, 1895, the supreme court of Florida affirmed the judgment of this honorable court in the first and second points of the aforesaid decree, and as to
99 the third point of said decree it affirmed in part and reversed it in part, and by mandate returned the cause to this court.

The supreme court decided in effect that the State did not have the power to follow this property for the taxes of 1879, 1880, and 1881 by assessment in 1885, if it had ceased to be in the possession or ownership of the persons to whom it belonged during the time for which such assessment was made, into the hands at time of assessment of innocent purchasers for value, and reached its conclusion that any portion of this property was in 1885 in the same possession as in 1879, 1880, and 1881, or in that of their privies, by a wholly mistaken view of facts not in issue in the case as submitted and upon an interpretation of the statements of the bill that is entirely at variance with the facts as they existed and the understanding and purport of such statements at hearing below, by which the court above found that a portion of said property, to wit, the railroad from Jacksonville to Chattahoochee river, with branches, was owned and operated by Edward J. Reed and associates from September, 1879, to February 8th, 1882, when they organized a company known as the Florida Central and Western Railroad Company, whereas the truth and facts are that during all these years covering the whole of the period for which these taxes are assessed and for the entire time between September, 1879, and January 6th, 1882, a company known as the Jacksonville, Pensacola and Mobile Railroad Company owned that part of the aforesaid line of railroad between Lake City and Chattahoochee, and it was possessed, used, and operated by receivers of the United States court, viz., Sherman Conant and A. B. Hawkins, who retained the possession of said road and received and retained the tolls and revenue thereof from September, 1879, the date of the sale, as alleged in the original bill, until
100 after the said sale was confirmed in January, 1882, when, and not before, H. R. Jackson, Chas. H. Simonton, and Adolph Engler, as purchasers at the sale of 1879, were admitted to the possession and ownership of said railroad in January, 1882, before which last-named date Reed and his associates were not owners of and were not possessed of said property or in any way interested therein.

As to such parts of the railroad of petitioner as lies between Lake City and Jacksonville, the same was held, owned, possessed, and en-

joyed by the Florida Central Railroad Company, its owner, for many years until the judicial sale thereof on the 6th day of January, A. D. 1882, when it was purchased by Edward J. Reed, who for the first time became possessed of the said line of railroad, after the confirmation of such sale occurring thenceafter in less than ten days from the date of sale aforesaid.

And in like manner as to the lines of railroad from Fernandina to Cedar Keys and Waldo to Ocala, for the lack of direct information and because of petitioner's being, as aforesaid, an entire stranger to the transactions and changes of title preceding the creation of the Florida Railway and Navigation Company and its investiture of the possession of the railroad property, coupled with the fact that all records of the judicial proceedings and sale thereunder and herein anywhere referred to had been destroyed by fire. Your petitioner says that it was not pretended authoritatively to allege in said original bill the chain of title to such parts of road into the F. R. & N. Co., but that the averments made were introductory to and subordinate to the allegation, in the answer not denied, that there was such change in ownership between the dates for which levy was made and the date of assessment as that there was an entire change of ownership of the properties, and that, too, for value.

101 And that the allegations of the bill as made originally were made by the petitioner, who is a corporation that had no existence at the time of the transactions referred to and was not even created at the time of the making of the assessments complained of, but was formed afterwards to own and operate the said railroad properties that had been purchased by people at a judicial sale in 1887, who were unfortunate creditors of the previous owner and who were entire strangers to the property prior to their purchase, so that petitioner was not informed of the real facts as here stated and was not advised of their materiality, nor put upon notice of the importance in value of a statement thereof as a deraignment of title by any issue raised in the pleadings, since the narrative of title in petitioner's original bill was only in explanation of the situation at time of assessment, which justified (the) *the* allegation in the bill of an entire change of ownership, for value, after the first of January, 1881, of the entire properties and before the date of the assessments; to which averments issue was made by the amended answer of defendant, by admission of the alleged mesne conveyances and by a denial, as upon demurrer to the bill, that such holders (in 1885) acquired any immunities from taxation on said railroad, etc.; and petitioner further alleges that it now knows that no party in interest in the lines of railroad from Fernandina to Cedar Keys and Waldo to Ocala, in 1885, at the date and time of the assessment, or in the Florida Railway and Navigation Company, that at such day held and owned the whole line of petitioner's railroad then in existence, had one dollar in value or any interest of any kind in the said lines of railroad or either of them in the years 1879, 1880, or 1881.

Wherefore, inasmuch as petitioner was an entire stranger, as aforesaid, to all of the history of the ownership of the separate and
102 several parts of the lines of railroad taxed, as aforesaid, for the years 1879, 1880, and 1881, for and during the years it

was taxed as complained of and as herein impleaded, the defendants upon an issue of law as to whether, when the time for the assessment and collection of taxes has passed and the taxing statute affixed no lien to the railroad property, which is real estate, and the State had made no assessment nor taken any other step to collect the same, such real estate could not be pursued for such back taxes when it had gone into the hands of innocent purchasers for value, which as to this particular portion of said original bill was a particular issue made by the pleadings, your petitioner is advised that it is necessary to bring the question of fact as to whether the Florida Railway and Navigation Company was such innocent purchaser of such railroad at the time of such assessment, never before put in issue, in order that it may be determined and passed upon, and that the law and the right may prevail.

Your petitioner prays that leave be granted to it to file a supplemental bill or such other pleading or amendment thereof against said William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, Florida, for the purpose of determining the aforesaid question, with proper and apt words to make certain the issue and to have determined the actual facts in such case and with prayers for relief as may be proper, and for such other, etc., and the petitioner avers that this petition is not interposed for vexation or delay.

And the petitioner files herewith the written assent of the defendant W. D. Bloxham, comptroller, as aforesaid, to the making of such amendments.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY,
By JOHN A. HENDERSON, *Its Solicitor.*

103 TREASURY DEPARTMENT, STATE OF FLORIDA,
COMPTROLLER'S OFFICE, TALLAHASSEE, *Oct. 11th*, 1895.

Hon. W. B. Lamar, attorney general, Tallahassee.

DEAR SIR: My letter of September 6th to Hon. John A. Henderson was only intended to express my willingness that evidence might be introduced to prove any material facts that had not been submitted to the courts. Concluding from your telegram that you gave it a broader construction, I wired Col. Henderson withdrawing said letter, and it will not appear among the papers in the case of The F. C. & P. Railroad *vs.* Comptroller, and, of course, will not be considered by the honorable court. In withdrawing said letter I am impelled by a sense of right to express a willingness on my part that any new material questions—questions not submitted to the court—should be raised and passed upon according to the facts.

Very truly yours, W. D. BLOXHAM,
Comptroller.

STATE, COUNTY, AND CITY OF NEW YORK:

Before me, John D. Miller, Jr., a commissioner of deeds in the State, county, and city of New York for the State of Florida, person-

ally came H. Rieman Duval, to me well known, and who, being duly sworn, says that the contents of the foregoing petition are true, and the statements therein made as to the time, manner, and cir-
104 cumstances of the want of knowledge of the facts set forth in said petition by the complainant are true, as also are the statements therein made of the discovery of the same and the difficulties attendant upon such discovery. Affiant says that he has continuously been the president of the complainant company since its organization, and that the purpose of the filing of said petition is not for delay or vexations; and the affiant says that he verily believes that the end- of justice and of fair dealing require the granting of the prayer of the petition and the speedy and proper determination of the questions sought to be raised by the pleadings sought to be filed.

H. RIEMAN DUVAL.

Sworn to and subscribed before me, a commissioner of deeds in the State, county, and city of New York for the State of Florida, this 15th day of October, 1895.

[SEAL.] JOHN D. MILLER, JR.,
Commissioner of Deeds for the State of Florida.

On the 9th day of November, 1895, the court, after due notice given of the hearing, made the following ruling upon said petition:

105 In the Circuit Court of the 2nd Judicial Circuit of Florida in and for Leon County, Fla. In Chancery.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY
vs.
WM. D. BLOXHAM, as Comptroller, &c., and JOHN A. PEARCE, as Sheriff of Leon County, Fla.

This cause *coming* on to be heard before the undersigned, judge of the 3rd judicial circuit of Florida, in place of the judge of the said 2nd judicial circuit, disqualified, on the petition of the complainant for leave to file supplemental bill in nature of bill of review or other amendments to its bill in this cause, and was submitted and considered upon brief by counsel for the said parties respectively, and the court having considered the same, it is hereby ordered, adjudged, and decreed that the said complainant has leave to file its supplemental bill in the nature of a bill of review in the above-entitled cause. Done and ordered at chambers, at Live Oak, Fla., this the 9th day of November, 1895.

JOHN F. WHITE,
Judge of the 3rd Judicial Circuit.

On the 12th day of November, 1895, the plaintiff filed its supplemental bill in nature of bill of review in the words and figures following:

106 In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

To the honorable the judge of the circuit court of the 3rd judicial circuit of Florida, sitting in place of Hon. John W. Malone, judge of the said 2nd circuit, disqualified:

Complaining, showeth unto your honor your orator, The Florida Central and Peninsular Railroad Company, a corporation organized under the laws of the State of Florida—

That on or about the 2nd day of November, A. D. 1892, your orator exhibited its original bill of complaint in this honorable court against William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county aforesaid, the defendants hereinafter named as defendants thereto, thereby to have it decreed that the exemption from taxation under the 18th section of the internal-improvement act was a continuing exemption for thirty-five years after the completion of the several lines of railroad constructed on the routes in said act designated, and that said exemption attached to the *rem* following the property into the hands of this complainant; (2) to have a decree for the recovery by the complainant, as successor to the rights therein of the Florida Railway and Navigation Company, of $140,812.47 paid by said last-named company in 1885 for taxes of 1882, 1883, and 1884 to the State of Florida, alleged to have been illegally assessed and to have been paid under duress and upon protest, and (3) to enjoin the collection by these defendants of taxes assessed in 1885 against property now owned by the complainant for the years 1879, 1880, and 1881, which were sought to be collected under the provisions of the statutes, chapters 3558 and 4073, Laws of Florida.

107 That in said bill of complaint it was stated that your orator became possessed of the railway property upon which has been assessed the tax complained of on the 1st day of May, 1889, and that your orator was then organized as a corporation for the purposes of operating and owning such railroad by William Bayard Cutting and associates, who had been owners and holders of certain bonds and other evidences of indebtedness of the Florida Railway and Navigation Company, a company that before and until then owned and operated such lines of railway, and that being such creditors of said company, and having no other interest therein than as such creditors, they had been obliged to buy the railroads aforesaid at a judicial sale made and had in the enforcement of the liens for the security of such bonded indebtedness; that the said Florida Railway and Navigation Company was a corporation under the laws of Florida, created by the consolidation of certain separate lines of the railways here involved, to wit, of the Florida Central and Western railroad and the Transit and Peninsular railroad and other companies, the Fernandina and Jacksonville Railroad Company and the Leesburg and Indian River Railroad Company, on the 29th day of February, A. D. 1884, and that such consolidation was made by radical changes in the holdings of the capital stock of said company, and with the result that more than one-half in value of the

holdings in such Florida Railway and Navigation Company was by the acquirement of the interest of new holders therein not before interested in the one and the other of said constituent companies; that the Florida Central and Western Railroad Company was a corporation under the laws of Florida organized thereunder by Edward J. Reed and his associates, who, by deed from the said Reed, became
invested with (with) the property in that line of such railroad
108 as lies between Jacksonville and Chattahoochee river, which
said last-named line of railroad in said bill was alleged to have been sold under decrees of foreclosure under the lien of the statutory mortgage created by chapter 1716 of the Laws of Florida to the said Edward J. Reed.

And it was further stated in said bill that the Florida Transit and Peninsular Railroad Company was created as a corporation under the laws of Florida by the consolidation on the 22nd day of December, A. D. 1882, of certain railroad corporations under the laws of Florida, to wit, the Atlantic, Gulf and West India Transit Company, the Peninsular Railroad Company, and the Tropical Florida Railroad Company; that before these several consolidations each of the aforenamed constituent railroad companies were entirely independent corporations, each with their separate organizations and capital stock and owners of separate and distinct parts of said line of railroad, viz:

The Florida Central and Western Company of the line from Jacksonville to Chattahoochee and branches to Monticello and St. Marks, with its distinct debts and liabilities, as stated in said original bill; the Florida Transit and Peninsular Railroad Company of the lines from Fernandina to Cedar Keys, and the Fernandina and Jacksonville Railroad Company, with its line from Hart's Road to Jacksonville, both of which had also their separate and distinct bonded indebtedness and liabilities, as also set forth in said bill, and the Leesburg and Indian River Company, with its line from Wildwood to Leesburg, and the effect of the consolidations, as to the changes in interest and ownership, was in each case as hereinbefore stated.

The said original bill also charged that the name of the West
India Transit Railroad Company was formed by certain par-
109 ties who purchased the same at a sale made by a master
under a decree of the circuit court of the United States, but the time of said sale was not stated in said bill.

That the defendants were duly served with process in said original cause, and made answer thereto in the nature of plea, demurrer, and answer, admitting the statutory exemption, but contending that the same did not exist in favor of your orators or of the Florida Railway and Navigation Company, but that such was for the benefit only of the company constructing the particular part of railroad on the above-indicated routes; that for like reason complainant was not entitled to recover the money paid on account of the taxes for the years 1882, 1883, and 1884, and to the effect that notwithstanding the changes of ownership of the taxed property between the years of 1879, 1880, and 1881, for the taxes on which it was assessed, and the 18th day of October, 1885, when it was actually and for the first time

assessed or attempted to be collected, that it was lawful and proper to levy the tax as it was done on the property for such years, notwithstanding the changes of ownership. Replication was filed, and before further proceedings the case was heard by your honor in November, 1893, on application for injunction *pendente lite*. At this hearing no contention was made by the defendants that the company that was assessed in 1885 was the owner of the property or had any interest therein in the years 1879, 1880, or 1881, or either of them, but the issue was fully and unequivocally made that it was competent to tax the property for the taxed years in the hands of strangers in the years when assessed.

And upon these issues it was stipulated that the decree to be made should be a final decree.

110 Later and in said month of November it was decreed that the complainant was not entitled to the exemption from taxation as claimed, and was not entitled to the return of the money paid for taxes, and enjoined the collection by the defendants of the taxes assessed for the years 1879, 1880, and 1881.

The parties each appealed from the decree of this honorable court, the defendants here there assigning as error the decree of this honorable court as last above stated.

That afterwards and on the 19th day of March, 1895, the hon. supreme court of Florida passed its judgment on said appeal and affirmed the decree of this court on the two first propositions in said decree, and on the third proposition thereof affirmed it in part and reversed in part, deciding in effect that while the State did not have the power to follow this property for the taxes of 1879, 1880, and 1881, by assessment in 1885, if it had in the interval gone into the hands of innocent purchasers for value, the Florida Railway and Navigation Company was found not to be such innocent purchasers, and remanded the cause for further proceedings.

And your orator further showeth by way of supplement that it has since discovered and the fact is that the line of railroad between Lake City and Chattahoochee river was wholly owned by a railroad corporation known as the Jacksonville, Pensacola and Mobile Railroad Company during the entire years of 1879, 1880, and 1881, and until the first day of January, A. D. 1882; that it was wholly in the possession of said last-named company or in that of receivers appointed by the United States circuit court for the northern district of Florida in suits for the enforcement of liens to secure the payments of the bonds of the State of Florida issued under chapter 1716, Laws of Florida,

111 and that while it is true that there was a sale of said line of railroad under a decree in said cause made in September, 1879, it is not true as alleged in said bill that the said E. J. Reed was the purchaser, but the purchasers were Henry R. Jackson, Charles H. Simonton, and Adolph Engler, and it is not true that Reed or these purchasers went into the possession of said line of railroad at that time, but the facts are, as your orator has lately discovered, that there was an appeal from the decree in said cause to the Supreme Court of the United States and supersedeas thereunder,

and although there was confirmation of said decree by the Supreme Court of the United States at the term thereof in 1880–1881, the aforesaid sale was not confirmed until after the first day of September, A. D. 1881, and the purchasers at such sale never perfected their purchase, and never paid the purchase price, and never received any deeds to the property, and were never admitted into the possession of said property nor to the receipt of its revenues, and never had any ownership therein until after the date of said confirmation and on or after, to wit, the 1st day of January, A. D. 1882, and that as to the line of railroad between Lake City and Jacksonville the same was held, owned, and operated by a company known as the Florida Central Railroad Company during all the years of 1879, 1880, and 1881, and the Edward J. Reed who bought the said line at judicial sale under the decree in like enforcement of said statutory liens at a sale made on January 6th, 1882, was himself and his associates an entire stranger to said property always until on or about the 20th day of December, A. D. 1881, when he purchased from E. M. L'Engle and others a majority of the capital stock of said Florida Central Railroad Company, and that never until after the expiration of the year 1881 was the Florida Central and Western Railroad Company or any of its organizers or promoters in ownership, possession,
112 or control of the said line of railroad from Jacksonville to Chattahoochee river or of any part of it.

And your orator further says that there was not in 1885 any one a *bona fide* holder of stock in the Florida Railway and Navigation Company who was directly or indirectly a stockholder of any company which owned during any part of the years 1879, 1880, or 1881 either of the lines of railroad which was taxed as here complained of, but that such company and holders of stock thereon, to wit, in the Florida Railway and Navigation Company, were parties who purchased the same for value, innocent of any knowledge of any claim for the taxes of this assessment and with no means of ascertaining in any way the intention of such a claim.

Your orator says again that it was a stranger to all of the events of the several alienations here set up and an unwilling purchaser of the properties; that it did not have the means of ascertaining the history of such changes and alienations, as the official records of the several decrees and sales and confirmations are all long since and prior to this suit destroyed, and the head and controlling spirits of the intervening corporations are either dead, in foreign lands, or, as is almost always true when creditors are forced to buy mortgaged railroads for defaults, hostile to the new owners and unwilling to impart correct information.

And your orator further charges that it was wholly misled as to the importance attached in the supreme court to the statements of the several alienations, particularly with reference to the times thereof, since the same were made largely as introductory to the material allegation that there was such change in ownership be-
tween the years for which the levy was made and the date of
113 the assessment as that there was a total change for value of the entire ownership, and this was not denied by defendants;

that the only issue upon this point made at the preliminary hearing was one of law, as hereinbefore stated.

Wherefore, inasmuch as your orator was an entire stranger, as aforesaid, to all of the history of the ownerships of the several and separate parts of the lines of railroad so taxed under the assessment in 1885 during the years of 1879, 1880, and 1881, for which it was taxed, and has therein impleaded the defendants upon this particular point upon an issue of law as to whether, when the time for the assessment and collection of taxes has passed and the taxing statute has affixed no lien to the railroad property, which is real estate, and the State had made no assessment nor taken any other steps to collect the same, such real estate can be pursued for such back taxes when it has gone into the hands of innocent purchasers for value, and had not submitted or intended to submit the question whether the Florida Railway and Navigation Company was such innocent purchaser for value, which complainant again respectfully but earnestly insists was not raised by the pleadings, and, if raised, was not supported by the facts in the case. Your orator is advised that it is material and necessary to bring the question of fact whether the said railroad company was such innocent purchasers of the railroad under the circumstances stated above at the time of such assessment, never before put in issue, in order that it may be determined and passed upon by this honorable court, and that the law may prevail.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed and may, upon their several corporate oaths, full, true, direct, and perfect answer make to all and singular the matters aforesaid as fully
114 and explicitly as if especially thereto interrogated, and more especially that they may answer and set forth to the best and utmost of their knowledge, remembrance, information, and belief:

(1.) Whether your orator exhibited his original bill against these defendants when and for the purposes herein stated or otherwise, and, if so, how otherwise.

(2.) Whether such proceedings were not had in said cause as hereinbefore stated, or how otherwise.

(3.) Whether your orator has not at the time stated or at other and what time discovered and is it not a fact that the Florida Central and Western Railroad Company first owned and possessed the line of railroad when and as herein stated, or how otherwise, and is it not a fact that before such purchase it was owned and possessed as in this bill stated, or how otherwise, and whether it is a fact, as stated herein, that no party in interest in the several lines of railroad herein named and taxed for and during the years 1879, 1880, and 1881, or either of said years, did not own any interest in the said properties in 1885, as stated, or how otherwise.

(4.) Whether the issue on the point of such ownership was in issue as stated in this bill, and is it not a fact that it was heard by the court on such point as stated in this bill, or how otherwise.

(5.) Whether your orator has not first been informed, and is it not a fact, as stated in this bill, that it did not know the history of such

changes in such sale, and was not advised that the question of fact was in issue in said bill stated, or how otherwise.

And that your orator may have the same relief against the said defendants as it might have had if the facts hereinbefore stated and charged by supplement had been as here stated in its original bill.

115 And in case that the defendants shall persist in collecting or attempting to collect the aforesaid tax from your orator by levy and sale of its railroad property or by other proceedings that they may be enjoined therefrom, and that your orator may have such other and further relief in the premises as the circumstances of its case require and to your honor shall seem meet.

May it please your honor to grant unto your orator, The Florida Central and Peninsular Railroad Company, the writ of subpœna, under this court's seal, and directed to William D. Bloxham, as comptroller of the State of Florida, and to John A. Pearce, as sheriff of Leon county, Florida, requiring them on a day therein named, under property penalty, to be and appear in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises; and, further, to stand to, perform, and abide by such other and further orders as to equity may appertain and to this honorable court may seem meet.

And your orator will ever pray, &c.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY,
By JOHN A. HENDERSON, *Its Solicitor.*

On the 12th day of November, 1895, subpœna issued.

On the 13th day of November, 1895, service of subpœna was made on defendants.

On the 2nd day of December, 1895, the defendants filed their appearance.

116 On the 3rd day of January, 1896, the defendants filed the following demurrer to the supplemental bill:

The demurrer of Wm. D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, of the State of Florida, to the supplemental bill of the Florida Central and Peninsular Railroad Company.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's supplemental bill contained to be true in such manner and form as the same is therein set forth and alleged, do demur to said supplemental bill, and for cause of demurrer show that it does not appear by said supplemental bill that any new matter has or is pretended to have arisen since the said original bill was filed, but it does appear by said supplemental bill that the pretended new matter stated therein happened, occurred, and became a matter of judicial record in the circuit — of the United States in the northern district of Florida prior to the filing of the said original bill, and that the plaintiff or its solicitor was informed thereof at the time of filing his said original bill.

And these defendants for further cause of demurrer show that the plaintiff claims in the said supplemental bill the same matters as in the original bill, but upon a title totally distinct.

And these defendants for further cause of demurrer show that the plaintiff has introduced in said supplemental bill a new case inconsistent with and repugnant to the case stated in the original bill.

And these defendants for further cause of demurrer show that the facts stated and found by the supreme court of the State of Florida in its opinion upon the case made in the original bill are *res adjudicata*, and the plaintiff is estopped from setting up other facts
117 in a supplemental bill inconsistent with and repugnant to the facts found by the said supreme court.

And these defendants, for further cause of demurrer, show that the said supplemental bill doth not contain any matter to entitle the said plaintiff to any such relief against them as is sought and prayed in and by the said supplemental bill. Wherefore these defendants do demur thereto and pray the judgment of the court whether they ought to be compelled to put in any further or other answer to said supplemental bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

W. B. LAMAR,
Attorney General and Solicitor for Defendants.

I, Wm. B. Lamar, solicitor for the defendants in the foregoing demurrer, do hereby certify that in my opinion said demurrer is well founded in point of law.

Given under my hand this 3 day of January, A. D. 1896.

W. B. LAMAR,
Att'y Gen'l & Solicitor for D'f'ts.

STATE OF FLORIDA, }
Leon County. }

Before me W. D. Bloxham, comptroller, and John A. Pearce, sh'ff of Leon county, personally appeared before me, who, being duly sworn, says that the foregoing demurrer is not interposed for
118 delay.

W. D. BLOXHAM,
Comptroller.
JOHN A. PEARCE,
Sheriff of Leon Co.

Sworn to and subscribed before me this 3 day of January, A. D. 1896.

W. M. McINTOSH,
[SEAL.] *Notary Public.*

On the 19th day of February, 1896, the complainant filed its notice for hearing on demurrer to supplemental bill.

On the 26th day of February, 1896, the court after due notice given made the following ruling upon said demurrer :

In the Circuit Court of the 2nd Circuit of Florida in and for Leon County.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, Comptroller, and JOHN A. PEARCE, Sheriff.

This cause came on to be heard before the judge of the 3rd circuit court, sitting at Live Oak, in the 3rd circuit, in place of the judge of the 2nd circuit, disqualified, on the demurrer to the complainant's supplemental bill, and was argued by counsel of the respective parties on this the 26th day of February, A. D. 1896, and the court having considered the same, it is ordered and decreed that the said demurrer be, and the same is hereby, overruled.

119 Done and ordered at chambers this 26th day of February, A. D. 1896.

JNO. F. WHITE,
Judge 3rd Judicial Circuit.

On the 6th day of April, 1896, defendants entered their appeal from said order overruling their demurrer in words and figures following:

In the Circuit Court, Second Judicial Circuit of Florida in and for Leon County. In Chancery.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

Comes now the above-named defendants, William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, in Florida, into the clerk's office of said circuit court, by William B. Lamar, as attorney general of Florida, their counsel and solicitor, and enters their appeal from the decree rendered herein on the 26th day of February, A. D. 1896, overruling the demurrer to the complainant's supplemental bill, and entered of record by Judge John F. White, judge of the third judicial circuit of Florida, Judge John W. Malone, of the second judicial circuit therein, being disqualified, against them, the said defendants, and in favor of

120 said complainant, to the ensuing term of the supreme court of the State of Florida, to be held at Tallahassee, in said State, commencing on the 9th day of June, A. D. 1896.

W. B. LAMAR,
As Attorney General and Counsel and Solicitor for Defendants.

Tallahassee, April 6th, A. D. 1896.

On the 11th day of April, 1896, appellants, by their counsel, filed in the circuit clerk's office for Leon county, Florida, their assign-

ment of errors and directions for making up the transcript of the record in the words and figures following:

In the Circuit Court for Leon County, Second Judicial Circuit of Florida. In Chancery.

WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, in Florida, Appellants,

vs.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

Comes now appellants, by W. B. Lamar, as attorney general, and files their assignment of errors, and say that in the record and proceedings herein manifest error has intervened, to their prejudice, and by way of assignment of errors aver:

1. That the circuit court erred in making its order and
121 decree of date the 9th day of November, A. D. 1895, allowing the Florida Central and Peninsular Railroad Company to file its supplemental bill in the nature of a bill of review.

2. That the circuit court erred in rendering its order and decree of date the 26th day of February, A. D. 1896, overruling the demurrer interposed by William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, to the said supplemental bill.

Wherefore appellants pray that said orders and decrees in the matters above set forth be reversed and annulled.

W. B. LAMAR,
Attorney General and Solicitor for Appellants.

In the Circuit Court for Leon County, Second Judicial Circuit of Florida. In Chancery.

WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, in Florida, Appellants,

vs.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

Directions for Making Up Transcript of Record.

122 To Mr. Council A. Bryan, clerk.

SIR: You will please begin on the 28th day of April, A. D. 1896, and make up as soon as possible a transcript of the record in the above case, and you will include in said transcript copies of the following papers, showing date of the filing of the same, viz:

(1.) The petition of the Florida Central and Peninsular Railroad Company to file a supplemental bill in the nature of a bill of review.

(2.) The order of Judge John F. White allowing said railroad company to file such bill.

(3.) The said supplemental bill.
(4.) The demurrer of the defendants, William D. Bloxham, as comptroller, and John A. Pearce, as sheriff, to said supplemental bill.
(5.) The order of Judge John F. White overruling the said demurrer.
(6.) The entry of an appeal from last-named order by the defendants, William D. Bloxham, as comptroller, and John A. Pearce, as sheriff.

And you will please recite only the filing (giving the date thereof) of the following papers in said above-named cause, viz:
(1.) The subpœna issued to the defendants, W. D. Bloxham, as comptroller, and John A. Pearce, as sheriff, giving date of the return thereof.
(2.) The appearance of said defendants.
(3.) The notice for hearing on demurrer to the supplemental bill.
The above papers to be so copied and recited comprise all the papers filed in said record from the filing of said petition for supplemental bill to the entry of said appeal.

W. B. LAMAR,
Attorney General and Solicitor for Defendants.

123 STATE OF FLORIDA, }
County of Leon. }

I, Council A. Bryan, clerk of the circuit court in and for the county of Leon, State of Florida, do hereby certify that the foregoing pages, numbered from one to 25, inclusive, contain a correct transcript of the record of the judgment in the case of Florida Central Peninsular Railroad Company, plaintiff, against William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, defendants, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files in my office, that have been directed to be included in said transcript by the written demand of the said parties.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 4th day of May, A. D. 1896.

[SEAL.] COUNCIL A. BRYAN,
Clerk of the Circuit Court for the County of Leon.

Whereupon came the parties, both appellants and appellee, in said cause, by their respective counsel, and submitted their cause to the said supreme court upon the said transcript of the record and oral arguments.

And at a subsequent day, to wit, on the 17th day of March, A. D. 1897, judgment was rendered by the said supreme court of the State of Florida in words and figures as follows, to wit:

124 WILLIAM D. BLOXHAM, as Comptroller, and John A. Pearce, as Sheriff, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR Railroad Company, Appellee.
} Upon Appeal from a Decree of the Circuit Court within and for the County of Leon.

This cause having been submitted to the court at a previous term thereof upon a transcript of the record of the decree aforesaid and the abstracts of the record and the argument of counsel for both parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is error in the said decree; it is therefore considered, ordered, and adjudged by the court that the said decree overruling the demurrer will be reversed and the cause remanded with further directions that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court, upon which a mandate will again issue; and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahoochee and branches. It is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of fifty-seven and $\frac{50}{100}$ dollars, all of which is ordered to be certified to the court below.

R. F. TAYLOR,
Chief Justice.

125 And afterwards, to wit, on the 22nd day of May, A. D. 1897, the supreme court issued its mandates to the circuit court in the words and figures as follows, to wit:

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

126 Whereas lately, in the circuit court of the second judicial circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree and order of the said circuit court were rendered November 25th, A. D. 1893, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January term of said supreme court, holden

at Tallahassee, A. D. 1895, the said cause came on to be heard before the said supreme court on the said transcript of the record, and was argued by counsel, in consideration whereof it was considered by said supreme court that the said decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing an injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct a return of the taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, be, and is hereby, affirmed, except that portion which holds the line of railroad of said appellee company from Ocala to Tampa subject to taxation aforesaid. The said decree be, and is hereby, reversed in so far as it makes subject to taxation for the years named that portion of the line of railroad of said appellee company from Ocala to Tampa, described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa. So much of said decree as holds that the statute under which the assessments were made and under which proceedings are being taken by the appellants to collect taxes of the appellee company is a special stat-
127 ute for the collection of general revenue and unconstitutional and void be, and is hereby, reversed. So much of the decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the appellants from selling or attempting to sell the same, under the assessment aforesaid or any part thereof, for the taxes of said years, and from in any manner interfering with or attempting to collect said taxes, be, and is hereby, reversed, and the cause is remanded for further proceedings, in accordance with the opinion of the court filed herein; and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of seventy-three dollars and thirty cents. Therefore

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, A. D. 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court, State of Florida.

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial
128 circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of

Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree of said circuit court was rendered February 26th, A. D. 1896, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas at the January term of said supreme court, holden at Tallahassee, A. D. 1897, the said cause came on to be heard before the said supreme court on the said transcript of the record and was argued by counsel, in consideration whereof it was considered by said supreme court that the said decree overruling the demurrer will be reversed and the cause remanded, with further directions that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court, upon which a mandate will again issue; and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree, from Jacksonville to Chattahoochee and branches. It is further ordered that the appellant do recover of the appellee their costs by them in this behalf expended, which costs amount to the sum of fifty-seven and $\frac{50}{100}$ dollars. Therefore

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to
129 be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court of Florida.

And afterwards, to wit, on the 15th day of February, A. D. 1900, at a regular term of the supreme court of the State of Florida, came the appellants, William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, by counsel, and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and order of the circuit court of Florida for Leon county, pursuant to an appeal entered in the circuit court in the case aforesaid on the 8th day of January, 1900, in the words and figures as follows, to wit:

Transcript of record of proceedings in the circuit court of Leon county, Florida, in the suit of Florida Central and Peninsular Railroad Company, complainant, *vs.* William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, in Florida, defendants, therein pending.

On the 2nd day of November, 1892, the complainant filed its bill of complaint.

130 In the Circuit Court of the 2nd Judicial Circuit of Florida, in Chancery, in and for the County of Leon Thereof.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

To the honorable the judge of said court:

The Florida Central and Peninsular Railroad Company, the complainant, by its solicitor, brings this its bill of complaint against William D. Bloxham, as the comptroller of public accounts of the State of Florida, and against John A. Pearce, as sheriff of Leon county, Florida, defendants; and thereupon, humbly complaining, shows unto your honor:

That the complainant is a corporation duly organized under the laws of Florida, under letters patent of date 17th November, 1888, and owns a line of railroad in said State which is composed of the several lines of road organized and constructed under authority of the laws of Florida, as hereinafter set forth.

A.

Of a line of railroad from Jacksonville to Lake City, in the State of Florida, which was built by a company known as the Florida, Atlantic and Gulf Central Railroad Company, duly chartered and organized under the laws of the State of Florida, chapter 481
131 thereof, and the several acts amendatory thereof.

B.

Of a line from Lake City to Quincy, in the said State, with a branch from Drifton to Monticello, both in the county of Jefferson thereof, which was built by a company known as the Pensacola and Georgia Railroad Company, duly chartered by and organized under chapter 484, laws of Florida, and the several acts amendatory thereof.

C.

Of a line of road from Tallahassee to St. Marks, in said State, which was built by a company known as the Tallahassee Railroad Company, and chartered by and organized under the laws of Florida, chapter —, and the acts amendatory thereof.

D.

Of a line of road from Quincy to Chattahoochee, in said State, which was built by a company known as the Jacksonville, Pensacola and Mobile Railroad Company, chartered by and organized under the laws of the State of Florida, chapter 1716 of said laws, and the acts amendatory thereof.

E.

Of a line of road from Fernandina to Cedar Keys, in said State, built by a company known as the Florida Railroad Company, which was chartered by and organized under chapters 482 and 729 of the laws of Florida and the several acts amendatory thereof.

F.

Of a line of road from Waldo to Ocala, in said State, which was built by a company known as the Peninsular Railroad Com-
132 pany, chartered by and organized under chapter 729 and its amendatory acts aforesaid.

G.

Of a line of road from Ocala to Wildwood, in said State, which was built by a company known as the Tropical Florida Railroad Company, under the authority of chapter 729 aforesaid.

H.

Of a line of road from Wildwood to Tavares, which was built by a company known as the Leesburg and Indian River Railroad Company, organized under the General Laws of Florida, chapter 1987, and the acts amendatory thereof.

J.

Of a line of road from Jacksonville to Hart's Road, which was built by a company known as the Fernandina and Jacksonville Railroad Company, also organized under chapter 1987 of the general law on the subject of railroads and canals, and its amendatory acts.

K.

Of a line from Wildwood to Plant City, built by the Florida Railway & Navigation Company on its route to the waters of Tampa bay.

L.

Of a line from Tavares to Orlando, built by a company known as the Tavares, Orlando and Atlantic Railroad Company.

M.

And of a line of railroad from Plant City to Tampa, in completion of its line to the waters of Tampa bay, and built by complainant.

133 That the several roads as above indicated were constructed and in operation about as follows:

A, B, C, as above designated, for years prior to 1865.
D, " " in 1869–'71.
E, " " for years prior to 1865.
F, " " in 1877.
G, " " " 1881.
H, " " " 1883.
J, " " " 1880.
K, " " " 1887.
L, " " " 1887.
M, " " " 1891.

That the several acts under authority of which these several lines of railroad were constructed are hereby adopted by this complainant as parts of its said bill, with the usual reference to their several provisions as though fully set out herein.

That in the year A. D. 1855, which was prior to the construction of any of the aforesaid lines of railroad, the legislature of the State of Florida, under the authority of the constitution of said State, passed a law commonly and hereafter called the internal-improvement act of Florida and numbered as chapter 610, Laws of Florida, approved Jan'y 6th, 1855.

That the constitution of the State of Florida in force at the time of the passage of said act, chapter 610 aforesaid, authorized and directed the legislature to provide for and encourage a liberal system of internal improvements.

That the act aforesaid, chapter 610, created a public fund, called the internal-improvement fund of Florida, and vested the
134 same in certain trustees, and invested the fund with a large and very valuable quantity of lands, and declared the construction of certain railroads and canals within the State of Florida as works of public improvement which should be aided by the State out of said fund.

That at the date aforesaid the State of Florida, with its area of 50,000 square miles, had an aggregate population of less than two to the square mile, two-fifths of whom were slaves; that she had not one mile of railroad propelled by steam, and only one tramway of 22 miles pulled by mules; that her population was as poor as it was sparse, and her people with their own available resources were totally unable to perfect any works of improvement in the way of encouraging settlement and facilitating the development of its resources and the utilizing of its commercial advantages; that the approbation of the people was given to the grant of all constitutional aid to the works of internal improvement so, as aforesaid, declared as proper to be aided by the provisions of said act.

The lines of railroad hereinbefore described as A, B, C, D, E, F, G, K, and M were those constructed and authorized so to be by this act and their respective charters, in compliance with the fourth section of said act, and were parts and parcels of those lines therein declared to be proper improvements to be aided from the State fund in the manner indicated in said acts.

That of the several railroad companies hereinbefore referred to there had been chartered previous to the date of this act only the

Florida, Atlantic & Gulf Central Railroad Company, the Tallahassee Railroad Company, the Pensacola & Georgia Railroad Company, and the Florida Railroad Company, but each of these companies chartered by the legislature, and any that might thereafter
135 be chartered, any portion of whose routes might be within the lines or routes so declared to be proper improvements for aid as aforesaid, should have the rights and privileges of constructing that part of the said lines embraced in their charters, and all the portions of the lines of complainant, which include all of its said line of road except so much thereof as is built between Wildwood and Orlando and between Jacksonville and Hart's Cross-roads, were authorized to be built within the said lines or routes entitled to receive the aid given by said act and its amendments.

Your orator would show that by reference to said internal-improvement act and the said act incorporating the said railroads it will appear that the State of Florida did not reserve any right to alter or amend or repeal said acts, nor was there any law then in force prior to their enactment which authorized such repeal, alteration, or amendment, nor was there any law applicable to the said railroads inconsistent with the provisions of said internal-improvement act and said acts of incorporation, with regard to the tax on railroad property and the exemptions thereon, and it was the intent of the legislature at that time, and the people of the State and said legislature have shown the said intention ever since (as by reference to the various laws touching the subject of exemption of railroad property from taxation will appear), that the exception contained in said internal-improvement act and said acts of incorporation should be continued in full force and effect during the term prescribed in said acts, and particularly should so continue in favor of the road from Fernandina to Cedar Keys, with branch to Tampa.

That the act, chapter 3558, Laws of Florida, authorizing the assessment of taxes on certain railroad property to pay the same for the years 1879, 1880, and 1881, did not specify the prop-
136 erty of the Florida Railway and Navigation Company and its constituents as liable to taxation, and the same was in fact exempted at the time of the passage of said act, and the State officers had no authority to levy upon said property for such taxes.

Your orator would further show that although the State constitution of 1868 enacted that no railroad property thereafter should be exempted from taxation, yet that said State constitution was inconsistent with the Constitution of the United States, in that it sought to deprive the companies then owning the property now belonging to the complainant of vested contract rights to such exemption, and that said State constitution abrogated the contract at that time in force between the State and the said railroad companies and illegally impaired the obligations imposed thereby upon the State of Florida, and is therefore null and void.

That among the grants given to said lines of road by said acts, and so given in aid of the construction of said lines of road, and without reference or limitation as to the proprietorships therein or to any changes in such ownership, were :

The exemption of the capital stock of any railroad company accepting the provisions of said act forever from taxation; and

The exemption of the roads, their fixtures and *fixtures and* appurtenances, including their shops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers or for the repair and maintenance of the roads, from taxation while the roads are under construction and for the period of thirty-five years from their completion.

The line of railroad, herein designated as "A," between Jacksonville and Lake City was built by its company, the Florida,
137 Atlantic and Gulf Central Railroad Company, which accepted the provisions of said act, according to the provisions of the act, and was accepted by the trustees of said internal-improvement fund as a completed line on the — day of ——, A. D. 1866.

The Pensacola & Georgia Railroad Company likewise accepted the provisions of said act for its entire line to Pensacola and built the line of railroad, designated as "B," between Lake City and Quincy, with branch to Monticello, and acquired the line of the Tallahassee railroad between Tallahassee and St. Marks, "C," which was also built in accordance with the terms and requirements of said internal-improvement act, and they were accepted as a completed road by the trustees of the internal-improvement fund on the — day of ——, A. D. 1866.

The Florida Railroad Company also accepted the provisions of the internal-improvement act and built according to its terms the line of road between Fernandina and Cedar Keys, hereing designated as "E," which was accepted by the trustees and was a completed road according to the provisions of said act on the — day of ——, A. D. 1864. The Florida Railroad Company likewise accepted the provisions of said act, chapter 610, for so much of the line of complainant's road as lies between Waldo and Tampa bay, which was constructed when and in the manner as hereinafter stated.

For non-compliance with the requirements of the internal-improvement act, as aforesaid, in the payment of semi-annual interest due upon completed roads to the sinking fund of the said internal-improvement fund, the following roads were seized and sold by the trustees of the internal-improvement fund under the provisions of said act, and were bought and afterwards owned and operated as follows—that is to say: For such defaults—

138 A. The Florida, Atlantic & Gulf Central railroad and all of its property of every kind was seized by the trustees of the internal-improvement fund and legally sold on the fourth day of March, A. D. 1868, to William E. Jackson and his associates, who, under the provisions of the internal-improvement act aforesaid, chapter 610, and of an act approved July 29th, 1868, being chapter 1646, Laws of Florida, were vested with the powers and franchises granted to the Florida, Atlantic & Gulf Central Railroad Company, and were made and thus became a body politic and incorporate under the name of the Florida Central Railroad Company, and as such and until as hereinafter stated the said Florida Central Railroad Com-

pany owned and operated the lines of this complainant's road "A" from Jacksonville to Lake City, as aforesaid.

B. The Pensacola & Georgia railroad, which included the road to St. Marks and all its property, for like default was in like manner seized and legally sold on the second day of March, A. D. 1869, to F. Dibble and associates; and subsequently, under the provisions of said internal-improvement act and the provisions of an act entitled "An act to perfect the public works of this State," being chapter 1716 of the Laws of Florida, and the acts amendatory thereof, the said associates or their assigns were made a body corporate and entered as owners into the possession of the line of complainant's railroad from Lake City to Quincy and from Drifton to Monticello and the road from Tallahassee to St. Marks, and owned and operated the same under the name of the Jacksonville, Pensacola & Mobile Railroad Company until as hereinafter set forth.

E. The Florida railroad, with all its property of every kind, which is so much of the complainant's line of road as lies between Fernandina and Cedar Keys, was for like default in like manner
139 seized and sold on the first day of November, A. D. 1866, to Isaac K. Roberts and his associates, who, under the provisions of the said internal-improvement act, chapter 610, Laws as aforesaid, and of chapter 482, Laws of Florida, and its amendatory acts, became the owners of said line of road, and thenceafter until as hereinafter stated operated the said line of road as a body corporate under the name of the Florida Railroad Company.

That between the years A. D. 1871 and 1873 the Jacksonville, Pensacola & Mobile Railroad Company built and completed and thenceafter until as hereinafter stated operated the portion of complainant's line of road herein designated as "D" and being that part thereof which is between Quincy and Chattahoochee and which is upon the line or route declared by act, chapter 610, to be proper to be aided by the provisions of said act.

That under and by virtue of the provisions of the charter of the Florida Railroad Company, chapter 729, Laws of Florida, the president and directors of the said Florida Railroad Company on the 22nd day of April, A. D. 1876, set off the construction of that portion of their line and of the line of this complainant which is between Waldo and Ocala to persons desirous of constructing the same, and such persons, under the authority therein given to have a distinct organization, associated themselves together as a body corporate under the name of the Peninsular Railroad Company, which built and thenceafter and until as stated herein operated the portion marked "F" of complainant's line of railroad between Waldo and Ocala, and which was completed on the first day of January, A. D. 1879.

That by the same authority the proper officers of the Florida Railroad Company, on the 22nd day of January, A. D. 1881, set off
140 to persons desiring to construct the same the right of constructing so much of its said line of road as was between Ocala and the waters of Tampa bay, and such persons, under the authority therein given to have a separate organization, associated themselves

together as a body corporate under the name of the Tropical Florida Railroad Company, and built that portion of said line and of this complainant's line which lies between Ocala and Wildwood, and is marked "G," in the years A. D. 1881 and 1882.

That under the terms of the statutory mortgage created by chapter 1716, Laws of Florida, all that portion of complainant's line between Jacksonville and Chattahoochee, and including the branch to Monticello and the St. Marks road, was, on the twenty-fifth day of September, A. D. 1879, sold under decree of foreclosure to Edward J. Reed, who, together with his associates, organized a company under the general laws of the State of Florida, known as the Florida Central & Western Railroad Company, which latter company was by deed of the said Reed dated 28th of February, 1882, invested with all the rights, privileges, and immunities covered by said mortgage and of the charters and statutory benefits of the several constituent companies, but without becoming in any way obliged to pay any of the debts or obligations of any such companies.

On the 30th day of March, A. D. 1880, the Fernandina & Jacksonville railroad, being that portion of complainant's line which is between Jacksonville and Hart's Cross-roads, and herein marked as "J," was built by a company having the name of the Fernandina & Jacksonville Railroad Company, the company organized under the general law, chapter 1987, of the State of Florida.

On the 18th day of January, A. D. 1872, the name of the
141 Florida Railroad Company was changed to the Atlantic, Gulf & West India Transit Company by chapter 1918, Laws of Florida.

Under a decree of the circuit court of the United States for the northern district of Florida, in a suit between Doggett, receiver, and the Atlantic, Gulf & West India Transit railroad, for the enforcement of the payment, to the use of the trustees of the said internal-improvement fund, of a sinking fund for the redemption of the bonds of the Florida Railroad Company, which were issued under the provisions of the said act, chapter 610, and which had not been returned by the sale of said line of road in 1868, as aforesaid, but were still outstanding, so much of your orator's road as then belonged to said company, being that portion which lies between Fernandina and Cedar Keys, with all of its property and franchises, was sold by J. B. C. Drew, master, to Edward N. Dickerson and C. D. Willard, trustees, and thereupon these trustees, for themselves and their associates, formed the Atlantic, Gulf and West India Transit Company under the said act of 1853, chapter 482 and chapters 610 and 729, and the act of January 25th, 1869, respectively. This company's name was changed in 1881 to the Florida Transit Railroad Company.

On the 22nd day of December, A. D. 1882, the following companies were consolidated into one company, according to the laws of Florida, viz: The Atlantic, Gulf & West India Transit Company, the Peninsular Railroad Company, the Tropical Florida Railroad Company. The company thus formed was called the Florida Transit & Peninsular Railroad Company.

On the 29th day of February, A. D. 1884, the Florida Transit & Peninsular Railroad Company, the Florida Central & Western
142 Railroad Company, the Fernandina & Jacksonville Railroad Company, and the Leesburg & Indian River Railroad Company were consolidated into one company. The company so formed was called the Florida Railway & Navigation Company.

The Florida Railway & Navigation Company built its line of railroad from Wildwood to Plant City and completed the line begun by the Leesburg and Indian River Railroad Company to Tavares.

The several companies thus consolidated had bonded indebtedness incurred by construction and operation, as aforesaid, and severally secured by deed of trust on their respective lines which were outstanding as follows:

The Florida Transit Railroad Company on May 10th, 1881, issued 1,000,000 of 6% bonds due March 1st, A. D. 1911; the Peninsular Railroad Company on Aug. 11th, 1878, issued $350,000 of 7% bonds due on Aug. 1st, 1900; the Fernandina and Jacksonville Railroad Company, Aug. 11, 1880, issued $300,000 of 7% bonds due March 1st, A. D. 1900; the Florida Central & Western Railroad Company on 9th March, 1882, issued $2,808,000 of 6% bonds due March 1st, 1922, for defaults in the payment of the interest on which bonds it was provided in each case that the entire indebtedness should, at the election of the trustees of the respective bondholders, become due and payable, principal and interest. To secure the consolidations of the several companies, as herein stated, into the Florida Central & Western Railroad Company and of other companies into the Florida Transit & Peninsular Railroad Company mutual concessions were necessary, and your orator avers that each of said changes and consolidations were made by radical changes in the holdings of the capital stock of said company, and that with each and every of such changes and consolidations parties not before interested in the one and the other of said constituent companies thus became *bona fide* holders of legal estates in such companies from the respective dates of said consolida-
143 tions and changes, and entitled to the protection of the existing laws to their property from and after the respective dates of such several acquisitions, and in like manner it is true that the consolidations of the aforesaid several companies into the Florida Railway and Navigation Company was accomplished with like changes of interest and with the acquirement of new interests by the several holders of the capital stock of said last company, and holders thereof from the date of such consolidation became *bona fide* holders of proprietary interests in each of said constituent properties, and which interests were then acquired subject to the laws of such property as they then existed and entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property; that such changes of holdings were equal to more than one-half in value of each and every of said properties.

Your orator avers that the effect of the legislation hereinbefore set forth was an exemption of all its lines of road which were built on the lines indicated in the 4th section of the internal-im-

provement act from taxation while under construction, and for a period of thirty-five years from the date of the completion of the several integral parts, as herein set forth, none of which limitations of time have expired; that the exemption as aforesaid was an immunity given as a consideration for the construction of the said several lines of railroad and was in the nature of an additional value to said roads over and above their values as determined by the volume of business to be done by them or the earnings their owners received from such sources, and your orator avers that such immunity was an inducement, and a controlling inducement, to the investment of the moneys which were necessary to be expended in the construction of each and every the parts aforesaid of said
144 separate lines of road on the routes indicated in said internal-improvement act.

By reason of which premises your orator avers that the exemption of said lines of railroad from taxation for the several periods of time, as alleged, became, by contract of the State for the consideration aforesaid, a part and parcel of the property value of said roads and was not intended to be and never was in fact a personal privilege or gratuity to the corporations respectively that built said lines of road or either or any of them; that the primary purpose of this legislation was the construction of the works belonging to the system devised by the said internal-improvement act, chapter 610, Laws of Florida, and not the extension of aidl or bounty to the corporations that had or might acquire the right to construct the works designated therein, and this exemption became a part of the value of the property of the railroad which your orator acquired in its acquisition of each and all of its said lines of the routes included in said system; that this was the law of the property as declared by the courts of the State of Florida when the Florida Railway and Navigation Company acquired the same.

Your orator charges that neither the said internal-improvement act, chap. 610, nor either of the acts amendatory thereof wherein was granted the exemption from taxation on the properties of your orator, nor either of the acts under which said several lines of road were constructed, contained any provision for or any reservation of power in the legislature of Florida to alter, amend, or repeal the said immunity of exemption from taxation as herein set forth. Wherefore it says that any and every act of the State of Florida, either through amendment of its constitution or by act or resolution of its legislature in so far as it was thereby attempted to re-
145 voke, repeal, or annul the said exemption from taxation, was in violation of the rights of your orator as guaranteed by the Constitution of the United States, which does not permit vested rights under previous contracts to be impaired by subsequent enactments.

That the act or resolution under which the said Barnes claimed to assess back taxes for the years 1879, 1880, and 1881 upon the Florida Railway and Navigation Company was not a law of the State of Florida, and, if a law, does not specify that company and was not applicable to it, and the act of such assessment, being in

violation of your orator's previously conceded and enjoyed exemption, is null and void.

That this exemption from taxation was accorded the several portions of your orator's line until the year A. D. 1885, when William D. Barnes, in his capacity of then comptroller of public accounts for the State of Florida, made an assessment of taxes upon the several companies then controlling the several parts of this line for State and county purposes. A copy of this assessment is hereto attached and marked Exhibit A and made a part of this bill for all purposes of reference.

That this assessment was null and void, as appears on the face of it, for, among others, the following several reasons:

The Florida Railway and Navigation Company did not exist, had not been created, and could not and did not own the property assessed or any property in the State of Florida or elsewhere during the years 1881, 1882, or 1883, or either of them, nor in 1884, except as herein stated.

The assessment was made in Gadsden county against the Florida Railway Navigation and Telegraph Company; that in other counties there was no assessment of values as in Baker and
146 Wakulla counties; that there *was* apparent misnomers and failures definitely to assess properly *pro ratas* of rolling stock, as in the assessments of Alachua county, although the assessment that was made therefor was upon an aggregate in excess of the valuation of the entire property.

The assessment made for Clay county exhibited an error of $7,000 in the aggregate of valuation; that the assessment was confused and misleading in stating and scheduling rolling stock as realty, as in Levy, Gadsden, Suwannee, and other counties, and as personal property, as in the counties of Duval, Baker, Bradford, Leon, and other counties.

That the assessment was not upon a uniform basis of value for the same kinds of property, as in the instance of the assessment of certain lines of telegraph of your orator at $50, when, for the same years, the telegraph lines of the Western Union Telegraph Co., whose lines were as good or better than those of your orator, were only assessed at $10 per mile.

The line of railroad then belonging to the said Florida Railway and Navigation Company was on the 30th day of May, A. D. 1885, advertised for sale by the sheriff of Alachua county by virtue of a warrant issued by the said William D. Barnes, as comptroller, as aforesaid, and the said sheriff and the said comptroller threatened to sell the said property of said company for the taxes so assessed against it for the years 1881, 1882, 1883, and 1884; that not only was it the intention of said officers to make a sale of said railroad on said account, but your orator charges that they then and on that day distinctly stated to its officers and agents that it was the intention of the executive of the State to forcibly put the purchaser of said road at such sale into the possession of said road; whereupon, under the duress of the great wrong and injury that was then unlawfully
147 threatened to said property and because the said Florida Railway and Navigation Company was powerless to protect

itself from the wrong in the premises, the said company paid to the defendant, the State comptroller, as aforesaid, under protest that it was arbitrarily, illegally, and forcibly extorted from it, the amount of the taxes which had been assessed, as aforesaid, against its constituent properties, amounting to the sum of $140,812.47, and your orator attaches hereto as Exhibit "B" a copy of the receipt for the same and the protest of said company against the payment, as aforesaid, signed by said William D. Barnes, comptroller, as aforesaid, and which it makes a part of this its bill.

That on the eighteenth day of October, A. D. 1885, the said William D. Barnes made an assessment on the lines of the Florida Railway and Navigation Company under the authority of an act of the legislature of the State of Florida, being chapter 3558 of the same, approved on the 12th day of February, A. D. 1885, for taxes on said lines of road of the State of Florida and the several counties, as indicated in a copy of said assessment, which is hereto attached and marked Exhibit "E" and which is made a part of this bill, for the years 1879, 1880, and 1881.

And your orator charges that said assessment is illegal and unjust and without any true warrant of law; that the pretended act authorizing the same is unconstitutional and in violation of the contract and other rights of the Florida Railway and Navigation Company, and of its stockholders and of its bondholders and each and every of them, and of your orator succeeding to the rights of such bondholders, as hereinafter stated, and is likewise wrongful, injurious, unjust, and oppressive to your orator, and it specifies, among other reasons, that the same is so.

148 That when the Florida Railway and Navigation Company acquired its said line of road there was no lien in existence of such an assessed tax, and no notice of or even intimation of an intention to claim for the State of Florida a right to make such assessment; that by the law which was in force when it acquired the line of its road, which includes the portion of its line covered by this assessment, there was no assessment thereon for the years 1879 or 1880, and an assessment thereon for 1881 which had been paid, as aforesaid; that the law so in force then expressly prohibited the taxing power from taxing said company's road, or any other property in the State, even in case the same had been improperly omitted from the taxing rolls, and had thus improperly escaped taxation for more than three previous years from the time of making an assessment.

Your orator further avers that there were properties of large values, to wit, lands in the counties of Madison, Suwannee, Alachua, and Columbia, and in other counties of this State, and lands elsewhere in the State, which were improperly omitted from assessment for taxes during the years A. D. 1879, 1880, and 1881, and each of them, and that the act aforesaid, to wit, chapter 3558, Laws of Florida, was unconstitutional and void in that the said chapter 3558 did not provide for a uniform and equal rate of taxation; and, further, that it did not attempt to secure a just valuation and assessment for all classes of property, but was enacted to reach only property of the class with that of your orator, and there was no law at

the time of its passage for reaching the other classes of property, as alleged in this bill, which were omitted from assessment, and which thereby escaped taxation for said years, nor has any law been since enacted to correct the inequalities in assessments and to remedy the wrong done to your orator's property.

149 Your orator alleges that at the time the Florida Railway and Navigation Company was organized as a corporation and acquired its line of road, as aforesaid, it found the properties, which were then in existence and which are now of your orator's lines of road, assessed for the year A. D. 1880, as in Exhibit "C," hereto attached, will more fully appear, and your orator insists that it was an exhaustion of the State's and the tax-making power over the property when the assessment was made, and the time provided by law for correcting errors therein had expired, which time has long since elapsed in so far as the same could be made a lien on the property itself, and your orator avers that the right to levy any additional tax on the values of said property, if it exists at all, exists only as against the owners at the time of the property, and that the same is not now a lien on the property of your orator, and that any law of subsequent enactment which attempts to create a lien on this property in the hands of purchasers for value is void.

Your orator further shows unto your honor that on the 1st day of July, A. D. 1884, the Florida Railway and Navigation Company made an issue of $10,000,000 of first-mortgage coupon bonds and made its certain deed of trust to all of its property, including the several lines of railroad as designated herein, to secure the payment of said bonds, principal and interest, and that by the terms of said bonds and mortgage it was provided that on default in payment of interest of said bonded indebtedness the whole principal and interest of said bonds should become immediately due and payable; that it disposed of, for value and to *bona fide* holders, more than $5,000,000 of said bonds; all of which was done and accomplished prior to the date of the assessment as last herein complained of by the said William D. Barnes.

150 That one of the purposes of said bond issue was to retire underlying bonds of the several constituent companies forming the F. R. & N. Co., as hereinbefore stated, but that the purpose so to do had been entirely futile, and such underlying bonds were not redeemed.

That on the 26th day of October, 1885, for the failure upon the part of the said Florida Railway and Navigation Company to pay to W. Bayard Cutting the amount of money hereinbefore stated to have been paid to W. D. Barnes, comptroller of the State of Florida, on account of the taxes as paid, and which sum was borrowed from the said W. Bayard Cutting for that purpose, and judgment at law thereupon, and for defaults in the payment of the interest of its consolidated bond- and for the payment of the interest on each of the underlying bonds, as hereinbefore stated, which defaults had continued the required time, and for the adjudgment by the said several trust companies that by reason of said defaults and the continuation thereof the whole of the said bonded indebtedness, princi-

pal and interest, was due and then payable; the liens of the railroad of the Florida Railway and Navigation Company, as it then existed, was upon bills duly filed by the said W. Bayard Cutting and by the said several trust companies, representing the holders of said bonds, in the circuit court of the United States for the northern district of Florida, for the foreclosure of said liens and for the sale of the property thereunder.

That on that date H. Rieman Duval was appointed receiver of the said court, and took the said property into his hands as receiver; that afterwards, to wit, on the — day of March and the — day of July, 1889, under decree rendered in each of the said several causes, the entire properties were sold severally under their first liens as a whole under the lien of the mortgage created by the Florida Railway and Navigation Company

151 That the amounts realized from said sale were far short of even the accumulated interest on said indebtedness, and, with the exception of one case, was far less than the interest on each particular indebtedness.

That W. B. Cutting, as agent, bought the said property, and he and his associates organized the complainant company in this cause, and the company was admitted into the possession of the property so bought, all terms and conditions being previously complied with, on the first day of May, A. D. 1889, and has remained in possession since then.

That the rights and interest of the complainant in the said several properties relates back to the date of the said several respective mortgages created as aforesaid, and that your orator has thus become entitled to all of the assets of said company, included in which is the right to recover the amount of $140,812.47, unlawfully collected by the said Barnes, as comptroller, from the Florida Railway and Navigation Company, and to any and all such sums as at other times may have been in the same way unlawfully collected from the said receiver during the continuation of his management of said property as such.

Your orator avers that it is in no other wise whatever the successor to the Florida Railway and Navigation Company, and that it holds its property under and by virtue of liens created a long time in the advance of the pretended assessments under chap. 3558 of the Laws of Florida.

Further complaining, your orator says that on the 8th day of June, 1891, without any previous notice whatever to your orator, there was approved by the governor of the State of Florida an act, being chap. 4703 of the Laws of Florida, reference to which is here made as a part of this bill.

152 That, pretending to act under the authority of said act, the comptroller of the State of Florida has directed and the sheriff of Leon county intends and has undertaken to seize and sell the property of your orator for the State and county taxes so illegally assessed for the years 1879, 1880, and 1881; all of which doings are greatly to the wrong and injury of your orator as tending to injure the credit of its company and affects prejudicially the

values of its property and will cast a cloud upon the title of your orator thereto. Attached hereto is a copy of the comptroller's warrant to said sheriff, marked — and made a part of this bill.

That your orator is informed and believes that the said sheriff, unless restrained by the order of the honorable court, will sell the property of your orator for the purposes as set forth, and it attaches hereto a copy of the published notice given by the sheriff of his intention to sell said property on the 7th day of November, 1892, which is marked Exhibit — and made a part of this bill.

That all of these wrongs and injuries to your orator in his right and title to his property are against equity and good conscience; and inasmuch as your orator is without relief except in a court of equity, where such things are cognizable,

To the end, therefore, that the defendant- may, if they can, show cause why your orator should not have the relief hereinafter prayed, and that they and each of them may upon their corporal oath full, true, direct, and perfect answer make to all and singular the premises, and that your honor will by a decree of this honorable court decree:

1st. That all of its entire line of road from Jacksonville to Chattahoochee, and the branches to Monticello and St. Marks,
153 and the lines of road from Fernandina to Cedar Keys and from Waldo to Tampa are covered by the exemption from taxation as provided in the internal-improvement act.

2nd. That its line of road from Jacksonville to Lake City is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of its completion.

3rd. That its line of road from Lake City to Quincy, with the branch from Drifton to Monticello, and the road from Tallahassee to St. Marks, are not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of their completion.

4th. That its line of road from Fernandina to Cedar Keys is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1864, the date of its completion.

5th. That your orator's line of railroad from Waldo to Ocala is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1877, the date of its completion.

6th. That your orator's line of railroad from Ocala to Tampa is not subject to taxation for State or county purposes, and will not be for the full period of thirty-five years from the date of its completion to the waters of Tampa bay.

7th. That your orator's line of railroad from Quincy to Chattahoochee is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1874, the date of its completion.

154 8th. That your orator's lines of road and no part of them are subject to the payment of the tax assessed against them n A. D. 1885 for the years 1879, 1880, and 1881.

That each and every the assessments made by the said William D. Barnes for taxes for State or county purposes on the lines of road of your orator for either and each of the years 1879, 1880, 1881, 1882, 1883, 1884, 1885, and 1886 are illegal and void.

May it please your honor to grant unto your orator the injunction of this court, directed to the said William D. Bloxham, as comptroller, and to John A. Pearce, as sheriff of Leon county, State of Florida, restraining them and each of them from making any levy or sale, or attempting the same, on the property of the lines of your orator's railroad on account of any of the assessments for taxes made thereon for the said years of 1879, 1880, 1881, 1882, 1883, 1884, 1885, or 1886, and from executing or attempting to execute any warrants of sale issued under said assessments or either of them, and restraining the said William D. Bloxham from hereafter making any further assessments for such purposes or for any purposes of taxation upon the lines of your orator's road which is upon the routes between Jacksonville and Chattahoochee, or the branches therefrom to Monticello or St. Marks, or on the line from Fernandina to Cedar Keys, or from Waldo to the waters of Tampa bay, until the expiration of thirty-five years from the date of the completion of the said several lines.

And that it be decreed that the said William D. Bloxham do pay to your orator all moneys which have been so improperly collected on the account of said assessments for taxes, and for such other
155 and further relief as to equity may appertain.

May it please your honor to grant unto your orator the State's writ of subpœna, to be directed to the said defendants, William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, commanding them, on a day to be named, to appear before this court and make full answer under oath to all and singular the premises, and to abide the decree of the court herein.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY,
By JOHN A. HENDERSON, *Vice-President.*

JOHN A. HENDERSON,
Solicitor for Complainant.

STATE OF FLORIDA, }
Leon County. }

Personally came John A. Henderson, who, being duly sworn, says that he is the vice-president of the complainant company; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true as to all matters stated therein upon knowledge, and that as to all statements on information and belief therein made he believes them to be true.

JOHN A. HENDERSON.

Subscribed and sworn to before me this Nov'r 2nd, A. D. 1892.

COUNCIL A. BRYAN,
Clk Ct. Ct. Leon Co., Fla.

156

EXHIBIT A.

Copied from the assessment-roll of the several counties named, as made for the year A. D 1884, except as herein stated, and giving therefrom the style of the "name of tax-payer," description of property, aggregate value, and total amount of tax assessed for State and county purposes.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
Gadsden..	Florida Railway & Telegraph Navigation Company:			
	35 miles of main track, valued at $7,000 per mile.....	$245,000		
	$\frac{46}{100}$ miles of side track, valued at $3,500 per mile	1,610		
	Pro rata value of rolling stock, including engines, cars, and appurtenances.	17,603		
	20 miles telegraph lines, valued at $50.....	1,000		
			$265,293	$3,183.51
157				
Leon.....	Florida Railway & Navigation Company:			
	Length of main track, 26 miles...	$182,000		
	Length of branch road, 11 miles. Including right of way and roadbed.	44,000		
	Side track, $1\frac{40}{100}$, & main track....	4,900		
	Pro rata of rolling stock, including value of locomotives, engines, passenger & freight, construction, and all other cars and appurtenances.	12,000		
	C. F. C. lots 70 & 71, 72, 73, 87, 88, & 90	(300)		
	With the sections and other lands.	(800)		
	All the sec. houses and warehouses, &c., as therein described.....	(300)		
	Valuations of town or city lots and improvements	12,500		
	Value of all other personal property (except animals)..	23,693		
			280,993	4,355.38
Wakulla..	Florida Railway & Navigation Company.....		45,192	564.90
158				
Jefferson .	Florida Railway & Navigation Company:			
	18 miles main track..	$12,600		
	4 " " "	16,000		
	$\frac{52}{100}$ miles side track	1,820		
	Pro rata value of rolling stock, including cars and appurtenances.	11,155		
	1 lot and depot at Mont.....	2,000		
	1 depot at Lloyds.....	2,500		

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
	Lot at Drifton	305		
	Lot at Williamsburg	500		
	Value of all other personal property (except animals)			
			160,240	2,163.24
Madison	Florida Railway & Navigation Company:			
	Total value, including rights of way, road-bed, side track, and main track			
	Pro rata value of rolling stock, including engines, cars, and appurtenances, 34 miles	240,065		
	Value of all other personal property (except animals)	17,175		
			257,240	7,073.60
159				
Suwannee	R. R. F. Railway & Navigation Co.:	(?)		
	25 miles of track	175,000		
	$\frac{2}{100}$ miles side track	1,260		
	Pro rata share R. stock, engines, &c.	12,630		
	Depots Live Oak, Houston, & Welborn	2,780		
			191,670	2,300.05
Columbia	Florida Railway & Navigation Co.:			
	21 miles main track, $\frac{4}{100}$ side track, and *pro rata* rolling stock	159,219.83		
			159,219.83	2,229.08
Baker	Fla. Railway & Navigation Co.:			
	(?) (?)		181,245	2,537.46
Duval	Florida Railway & Navigation Co.:			
	Right of way, road-bed, side and main tracks	398,160		
	Personal, rolling stock, *pro rata*	27,830		
			425,990	5,963.87
160				
Nassau	Florida Railway & Navigation Company:			
	48 miles of main track, valued at 7,000 per mile	336,000		
	$2\frac{4}{100}$ miles of side track, valued at 3,500 per mile (F. & T. included)	8,540		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	24,251		
	Wharf improvements at the foot of Beach St., Fernandina, known as the steamship wharf	3,400		

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
	Railroad shops in Fernandina, fixtures, machinery, & tools in said shop	4,299		
	Value of all other personal property (except animals)	11,300		
			387,790	4,847.37
Clay	Florida Railway & Navigation Company: $6\frac{60}{100}$ miles at 7,000, 40,600; $\frac{34}{100}$ miles side track, valued at 3,500 per mile, $840; *pro rata* rolling stock, engines, cars, &c		44,370	510.27
Bradford	Fla. R'y & N. Co.: Total length of main track in Bradford Co., 20 miles. Total value of road, including right of way, road-bed, side track, & main track	143,045		
	Pro rata value of rolling stock, including value of locomotives, engines, passenger, freight, platform, construction, and other cars and appurtenances	10,205		
			153,250	1,477.51
161				
Alachua	Railroad, Florida Railway & Navigation Co.: Miles of main track at 7,000 per mile	406,000		
	Miles of side track, 3,500 per mile	6,790		
	Value of all other personal property (except animals)	29,310		
			442,100	7,073.60
Levy	Florida Railway & Navigation Co.: $39\frac{80}{100}$ miles main track, valued at 7,000 per mile	278,600		
	$\frac{63}{100}$ miles side track, valued at 3,500 per mile	2,205		
	Total value, including road-bed, right of way, side track, & main track	280,805		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,101.15		
	Aggregate amount	300,913.15	300,913	3,310.04

Exhibit A—Continued

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
Marion..	$40\frac{11}{100}$ main track, at 7,000	283,290		
	$1\frac{1}{100}$ side track, at 3,500	3,535		
	Total value, including rights of way, road bed, side & main tracks.....	286,825.00		
	Pro rata value of rolling stock, including engines, cars, & appurtenances.....	20,446.67		
	Aggregate amount to be assessed.	307,271.67	307,272	4,301.81
Sumter....	Florida Railway and Navigation Company:			
	Certain lands (described, but not levied on)			
	20 miles track	140,000		
	$\frac{46}{100}$ side track.....	1,610		
	Pro rata rolling stock.....	10,110		
			151,720	1,820.64

162 Copy.

B.

STATE OF FLORIDA:

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *April* 24, 1885.

State of Florida to Samuel C. Tucker, sheriff of Alachua county, Greeting:

You are hereby commanded to collect from the Florida Railway and Navigation Company, by levy and sale, in the same manner as now provided by law for the sale of property under execution from the circuit court, of the shops, fixtures, rolling stock, or any part thereof, or of the entire road or roads belonging to or owned by said company, the sum of one hundred and forty thousand and seventy-three dollars and sixty-one cents ($140,073.61), that being the amount of State and county taxes assessed against the Tropical Peninsular, Florida Transit, Florida Transit and Peninsular, Florida Central, Jacksonville, Pensacola & Mobile, Florida Central and Western, and Florida Railway and Navigation Company's railroads, all now owned or operated by the Florida Railway & Navigation Company, for the years 1879, 1880, 1881, 1882, 1883, and 1884, which are now due and unpaid, together with the *costs* and expenses of sale, and you will make due return hereof to this office.

Witness my hand and seal of office this the 24th day of April, A. D. 1885.

W. D. BARNES,
Comptroller.

163 Copy.

C.

STATE OF FLORIDA:

140,073.61
738.86

$140,812.47

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *May 28th*, 1885.

Received of the Florida Railway and Navigation Company the sum of one hundred and forty thousand and seventy-three $\frac{61}{100}$ dollars, assessed against the several railroads described in the following advertisement of the properties of the same, as the State and county taxes thereon, as therein expressed, and received also the sum of seven hundred and thirty-eight $\frac{86}{100}$ dollars as the costs and expenses of such collection.

(This does not include the taxes assessed against the Fernandina and Jacksonville Railroad property for the year A. D. 1883.)

Which said payment is made by the said Florida Railway and Navigation Company because of the levy and threatened sale, as indicated in said advertisement, and to avoid the sacrifice and injury which will be done to its property by such sale, and under protest that the amount so levied and assessed is not the proper amount due on said account by the said company, but is in excess thereof, and that this payment is not voluntarily, but is made under duress, and that it reserves to itself the right to recover such excess of payment as shall be found to have been herein made in any manner that it shall be available whereby so to do. This payment is made for the said Florida Railway and Navigation Company by Mr. J. Aug. Johnson, attorney.

(Signed) W. D. BARNES,
[L. S.] *Comptroller.*

164 Copy.

D.

Warrant.

COMPTROLLER'S OFFICE, STATE OF FLORIDA.

To John A. Pearce, sheriff of Leon county, State of Florida, Greeting:

You are hereby commanded to collect from the Florida Central and Peninsular Railroad Company, formerly known as the Florida

Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road or such part thereof as may be located in this State, belonging to or operated by said company, the sum of ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), that being the amount of State and county taxes assessed against the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, now constituting the Florida Central and Peninsular railroad, under the provisions of chapter 3558, Laws of Florida, for the years eighteen hundred and seventy-nine (1879), eighteen hundred and eighty (1880), and eighteen hundred and eighty-one (1881), which said amount is now due and unpaid, together with
165 the costs and expenses of sale as provided by law, and you will make due return thereof to this office.

Witness my hand and seal of office this the fifth (5th) day of October, A. D. 1892.

[SEAL.] W. D. BLOXHAM,
Comptroller.

(*Return.*)

Copy.

Came to hand this 5th day of October, 1892, & executed the within by levying on the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, the road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chattahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, this the 5th day of Oct., A. D. 1892.

(Signed) JOHN A. PEARCE,
Sheriff Leon Co.

Levy & ret., 1.10.

THE WEEKLY TALLAHASSEEAN

and

LAND OF FLOWERS.

Published every Thursday, at the office, Monroe street, Tallahassee, Florida.

Thursday, October 27, 1892.

Sheriff's Sale.

Under and by virtue of a warrant issued by Hon. W. D. Bloxham, comptroller of the State of Florida, bearing date of October
166 5th, 1892, to me directed as sheriff of Leon county, against the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, for State and county taxes due and unpaid for the year- 1879, 1880, and 1881, for ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), together with the costs and expense, commanding me to collect by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road, or such part thereof as may be located in this State, belonging to or operated by said company, I have this day levied upon and will expose for sale to satisfy said warrant, in front of court-house door, in the city of Tallahassee, during legal hours of sale, on 1st Monday of November, being 7th day of said month, being legal-sales day, the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines of divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, to wit: The road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chattahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, levied upon as the property of the Florida Central and Peninsular Railroad Company, embracing the lines or divisions
167 thereof formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

This 5th day of October, A. D. 1892.

JOHN A. PEARCE,
Sheriff Leon County.

168 *Statement Showing the Amount of Taxes Collected by the Comptroller from the Defaulting Railroad Companies, as Required by Law, and also Showing how the Funds so Received were Disbursed.*

Florida Railway and Navigation Company.

Received from said company on account of—	State taxes.	County taxes.
Gadsden county, taxes 1881, 1882, 1883 & 1884	$4,907 31	$7,395.39
Leon county, taxes 1882, 1883 and 1884	4,174.09	9,448.04
Wakulla county, taxes 1882, 1883 & 1884	933.67	1,460.03
Jefferson county, taxes 1881, 1882, 1883 & 1884	3,858.42	8,091.50
Madison county, taxes 1882, 1883 & 1884	4,373.18	9,922.32
Suwannee county, taxes 1882, 1883 and 1884	3,046.43	5,143 53
Columbia county, taxes 1881, 1882, 1883 & 1884	3,378.18	6,459.39
Baker county, taxes 1882, 1883 and 1884	3,072.51	5,837.67
Duval county, taxes 1879, 1880, 1881, 1882, 1883 and 1884	8,463.96	13,489.91
Nassau county, taxes 1882, 1883 and 1884	6,321.82	11,662.78
Clay county, taxes 1882, 1883 and 1884	802 12	1,131.47
Bradford county, taxes 1882, 1883 and 1884	2,342.80	1,722.75
Alachua county, taxes 1881, 1882, 1883 & 1884	10,308.84	21,897.76
Levy county, taxes 1882, 1883 & 1884	4,471 04	5,980.68
Marion county, taxes 1882, 1883 & 1884	4,968.49	9,170.64
Sumter county, taxes 1883 and 1884	1,945.63	3,891.26
	$67,368.49	$122,705.12
Disbursed as follows:		
To the several counties named		$120,692.29
For commission to attorneys, as provided by law, 15 per cent. on the taxes of 1879, 1880 and 1881	$1,377.52	2,012.83
Paid into State treasury	65,990.97	
	$67,368.49	$122,705.12

C.

Statement Showing the Amount of Taxes Assessed under the Provisions of Chapter 3558, Laws of Florida, upon Railroads and Property Thereto Belonging which were Omitted from the Assessment-rolls of 1879, 1880, *and* 1881.

Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

Counties.	Valuation.	General revenue.	General school tax.	Total taxes for State purposes.	County revenue.	County school.	County special.	Total taxes for county purposes.
Suwannee, taxes 1879, 1880 and 1881..	$163,580	$3,108.02	$490.74	$3,598.76	$1,962.96	$1,226.85	$981.48	$4,171 29
Alachua, taxes 1879 and 1880	250,000	3,000.00	500.00	3,500.00	2,000.00	1,250.00	1,000.00	4,250.00
Baker, taxes 1879, 1880 and 1881	156,960	2,982.24	470.88	3,453.12	1,255.68	1,098.72	1,098.72	3,453 12
Bradford, taxes 1879, 1880 and 1881..	131,410	2,496.79	394.23	2,891.02	1,051.28	1,051.29	262.82	2,365.39
Clay, taxes 1879, 1880 and 1881.....	39,720	754.68	119.16	873.84	417.06	357.48	218.46	993.00
Columbia, taxes 1879 and 1880.....	137,880	1,654.56	275.76	1,930.32	1,103.04	689.40	551.52	2,343 96
Gadsden, taxes 1879 and 1880.....	228,880	2,746.56	457.76	3,204.32	1,831.04	915.52	915.52	3,662.08
Jefferson, taxes 1879 and 1880	130,560	1,566.72	261.12	1,827.84	783.36	261.12	2,252.16	3,296 64
Levy, taxes 1879, 1880 and 1881.....	255,390	4,852.41	766.17	5,618.58	2,043.12	2,298.12	.....	4,341 64
Leon, taxes 1879, 1880 and 1881.....	206,200	3,917.80	618 60	4,536.40	2,474.40	1,546.50	3,402.30	7,423.20
Madison, taxes 1879, 1880 and 1881...	223,270	4,242.13	669.81	4,911.94	2,344.34	1,562.90	3,907.23	7,814.47
Nassau, taxes 1879, 1880 and 1881 ..	285,500	5,424.50	856.50	6,281.00	3,426.00	2,569.50	1,998.50	7,994.00
Wakulla, taxes 1879, 1880 and 1881...	30,120	572.28	90.36	662.64	361.44	240 96	180.72	783.12
	$2,239,470	$37,318.69	$5,971.09	$43,289.78	$21,053.72	$15,068.76	$16,769.43	$52,891.91
Savannah, Florida and Western Railroad Company.								
Hamilton, taxes 1879 and 1880.....	$56,000	$560.00	$112.00	$672.00	$336.00	$420.00	$84.00	$840.00
Suwannee, taxes 1879 and 1880.	32,000	320.00	64.00	384.00	256.00	160 00	128.00	544.00
Totals	$88,000	$880.00	$176.00	$1,056.00	$592.00	$580.00	$212.00	$1,384.00

170 On the 2nd day of January, 1893, the defendants filed their answer to the plaintiff's bill of complaint :

Circuit Court of the State of Florida, Second Judicial Circuit, Leon County. In Chancery.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

The Joint Answer of William D. Bloxham, Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.

The defendants, now and at all times hereafter saving and reserving to themselves and to the State of Florida, for which they are acting in the matter of the said bill complained of, all and all manner of benefit, advantage of exception, and otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, and especially all advantage of exception to this honorable court's jurisdiction and power to grant the relief prayed as to the collection of $140,812.47 from complainant by William D. Barnes, comptroller of the State of Florida, in the year A. D. 1885, as taxes due by the Florida Railway and Navigation Company to the State of Florida for the years 1881, '2, '3, & '4, for answer thereto or so much thereof as these defendants are
171 advised it is material or necessary for them to make answer to, answering, say :

These defendants admit that complainant is a corporation duly organized under the laws of Florida, but have not sufficient information to say whether the railroads named in complainant's bill, A, B, C, D, E, F, G, J, K, M, were or are constructed as required by their charters and the said internal-improvement act of Florida and the amendments thereto, and demand strict proof of the same.

Defendants, further answering, deny that the State of Florida did not reserve any right to alter or amend or repeal said acts, and defendants deny that there was no law or act inconsistent with the provisions of the internal-improvement act and said acts of incorporation with regard to the tax on railroad property and the exemption thereon, and defendants deny that it was the intent of the legislature or of the people of the State of Florida at that time and since to continue in full force or at all the exemption contained in said internal-improvement act and acts of incorporation during the time prescribed in said acts.

That the act, chap. 3558, Laws of Florida, was not required to specify as liable to taxation the property of the Florida Railway and Navigation Company and its constituents other than in the manner specified in said act, and these defendants deny that the property of the Florida Railway and Navigation Company and its constituents were in fact exempt from taxation at the time of the passage of said act, and defendants allege and aver that the State

officers were authorized to levy upon said property for such taxes.

Answering further, defendants deny that the State constitution of 1868 was inconsistent with the Constitution of the United States, and deny that said State constitution abrogated any contract in force between the State and the said railroad companies, as set
172 forth in said bill of complaint.

Defendants deny that the grant of exemption from taxation given said lines of road, as stated in complainant's bill, in aid of construction *were* given by the internal-improvement act without reference or limitation as to the proprietorships therein or to any changes in such ownership; and these defendants, further answering, say that as to so much of complainant's bill as claimed that by the acts of the legislature of Florida the property of the complainant and its constituent parts, the Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Florida Railroad Company, the Tallahassee Railroad Company, and the other roads mentioned in complainant's bill and designated as D, F, G, H, J, K, L, M, were exempt from taxation for thirty-five years, and that by reason of the Florida Central and Peninsular Railroad Company purchasing and acquiring the same in the manner and by the modes of conveyance as at foreclosure sale and otherwise, as set forth in complainant's bill, that the complainant is exempt in its property as aforesaid from payment of the taxes demanded by the State of Florida and by these defendants sought to be collected by the levy and proposed sale complained of, these defendants claim all the benefit they could have from a demurrer interposed thereto.

And defendants say that they are advised that if, as claimed by complainant, the legislature of Florida did intend to exempt the property of complainant's line of road if built in the lines indicated in the 4th section of the internal-improvement act, and of the Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Florida Railroad Company, the Tallahassee Railroad Company, and embraced in the roads of
173 the Florida Central and Peninsular Railroad Company, from taxation for the term of thirty-five years, the said legislature transcended its constitutional powers, and the said acts cannot be construed or held as exempting the property of the Florida, Atlantic and Gulf Central Railroad —, the Pensacola and Georgia Railroad Company, the Tallahassee Railroad Company, and the Florida Railroad Company, for defendants allege that said exemption was not extended to all railroad companies and their property in the State of Florida.

That defendants are advised and charge that the alleged grant of exemption, if made, was made gratuitously and without consideration, and if there was any consideration it was not such consideration as to preclude the people of Florida and this legislature by their subsequent organic law and legislation from subjecting even the Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Tallahassee Railroad Company, and the Florida Railroad Company to the same

burdens as are imposed upon other corporations or natural persons who enjoy the benefits of State and county governments; that even if the said acts cited by complainant's bill did intend and did constitutionally exempt the property of the Florida, Atlantic and Gulf, the Pensacola and Georgia, the Tallahassee, and the Florida Railroad Companies, organized prior to the constitution of 1868, and acquired by the Florida Central and Peninsular Railroad Company, from taxation, as claimed in its bill, these defendants say they are advised that such exemption did not pass by the several mesne conveyances to the complainant, for these defendants aver that by said acts there was only exempted the capital stock, railroad, and other property of the Florida, Atlantic and Gulf Central, the Pensacola and Georgia, the Tallahassee, and the Florida Railroad Companies, and defendants aver that with the exception of a part of the right of way, and probably a portion of the road-
174 bed, and probably a few other insignificant items, that the railroad and property upon which the taxes are now sought to be collected are not the same property which was the property of the said Florida, Atlantic and Gulf Central Railroad Company, the Pensacola and Georgia Railroad Company, the Tallahassee Railroad Company, and Florida Railroad Company, to which complainant's bill claims exemption attached, and these defendants aver that complainant has not proffered or tendered the tax upon any part of the taxed property.

Defendants, further answering, says that by the alleged transfers, consolidations, and purchase of the various railroads, as set forth in said bill of complaint, the complainant did not become entitled to all the rights, property, privileges, franchises, and immunities and alleged exemptions from taxation of the said railroads so claimed to be exempt from taxation as set forth in complainant's bill; but, on the contrary, these defendants are advised and charge that under the laws of Florida the complainant acquired nothing more than the property purchased by it from the chartered railroads named in complainant's bill, and acquired none of the said railroads' franchises, privileges, or immunities and alleged exemptions from taxation as a railroad corporation duly chartered, empowered to exercise the franchises and enjoy the privileges and immunities thereof in the State of Florida.

Defendants, further answering, say that as to the allegations that the lines of railroad designated as "A," "B," "C," "E" were built, accepted the provisions of the said act, and were accepted by the trustees of said internal-improvement fund as completed, and as to the allegations that for non-performance with the requirements of the internal-improvement act in the payment of semi-annual interest the roads mentioned as "A," "B," "E" were bought and afterwards owned and operated, the defendants have not sufficient information to either admit or deny the same and demand strict proof thereof, and especially that said
175 railroads were constructed as required by said act and amendments thereto; and as to the allegations that the Jacksonville, Pensacola and Mobile Railroad Company built the line of road desig-

nated as "D," and that the president and directors of the Florida Railroad Company set off the construction of the road between Waldo and Ocala, as alleged, and that the Florida Railroad Company set off to be constructed the road between Ocala and Tampa bay, defendants have no knowledge and demand strict proof.

Defendants, further answering, deny that the Florida Central and Western Railroad Company was by sale of complainant's line between Jacksonville and Chattahoochee and branches to Monticello and St. Marks to Edward J. Reed, and by deed of said Reed, 28th day of February, 1882, invested with all the rights, privileges, and immunities covered by said mortgage and of the charters and statutory benefits of the several constituent companies.

The defendants, further answering, say that they deny that by reason of the several consolidations of roads mentioned with the Florida Central and Western Railroad Company, the Florida Transit and Peninsular Company, and the Florida Railway and Navigation Company there was anything in or any existing laws of such property acquired by which they or the complainant herein can claim or receive any immunity or exemption from taxation or the taxes demanded now from them by the State of Florida herein.

And these defendants, further answering, deny that the effect of the legislation in said bill set forth was an exemption of all complainant's lines of road which were built on the lines indicated in the 4th section of the internal-improvement act from taxation as claimed; that the exemption, as aforesaid, was such an immunity as the legislature was not empowered by the constitution of Florida to
176 give and grant, and was and is unconstitutional, null, and void, and was not and is not such an immunity as could or does pass to the complainant through the several conveyances and purchases as set forth in the bill.

Defendants, further answering, deny that the exemption of the said lines of railroad set forth in said bill from taxation for the periods of time alleged became by contract of the State a part and parcel of the property value of said roads, and that this exemption became a part of the value of the property of the railroad which complainant acquired in the acquisition of each and all of its said lines, and deny that this was the law of the property as declared by the courts of this State when the Florida Railway and Navigation Company acquired the same, and that as to so much of complainant's bill as sets forth the claim that complainant is exempt from the payment of the taxes demanded by the State of Florida and by these defendants sought to be collected by the levy and proposed sale complained of, these defendants claim all the benefit they could have from a demurrer interposed thereto.

Defendants, answering further, say they deny the charge contained in that paragraph of complainant's bill alleging that neither the internal-improvement act or acts amendatory thereof, wherein was granted the alleged exemption, nor the acts under which said lines of road were constructed, contained any reservation of power in the legislature to alter, amend, or repeal the said immunity of exemption from taxation, and that any and every act of the State of Florida

attempting to revoke, repeal, or annul the same was violation of complainant's rights as guaranteed by the Constitution of the United States.

Defendants, further answering, say that they deny that the act under which W. D. Barnes, comptroller, claimed to assess back taxes for the years 1879, 1880, and 1881 was not a law of the State of Florida, but aver that it was a law of Florida, and that said
177 act does sufficiently designate and specify the Florida Railway and Navigation Company, because said company embraces such railroad property as designated by said act to have escaped the payment of taxes for the years mentioned, and defendants deny that said act of assessment was in violation of complainant's alleged exemption, and the said — is null and void.

Defendants deny that the assessment made by Wm. D. Barnes, comptroller, as shown by Exhibit "A," was null and void, and to that part of complainant's bill which asks relief as to the $140,812.47 paid to the comptroller, as alleged, these defendants are advised, and so say, that complainant cannot seek a remedy against that payment, if entitled to such, which is hereby denied in this proceeding, but that if complainant was injured and oppressed by compulsion in such payment the relief must be granted by the legislature of Florida, and defendants deny the jurisdiction and power of this honorable court to grant the relief prayed as to such first payment of taxes.

Defendants, answering further, admit that William D. Barnes made assessment on the lines of the Florida Railway and Navigation Company under chap. 3558, Laws of Florida, but defendants deny that said act is illegal or unjust, or that it is unconstitutional and in violation of any contracts and rights of the Florida Railway and Navigation Company, its stockholders and bondholders, and that said — is legal, just, and constitutional.

These defendants, being so advised, deny that the law in force at the time of such assessment prohibited the comptroller from assessing the property of the Florida Railway and Navigation Company in the manner stated.

These defendants, answering further, deny that a lien was not contemplated in favor of the State of Florida against the Florida Railway and Navigation Company at the time it acquired its
178 line of road, and they aver, admit, and so allege, that the State of Florida, by a joint resolution of its legislature, on the — day of ——, 1881, directed the comptroller and governor to employ counsel to bring suits to collect taxes due, but never up to that time paid by certain lines of railroad in this State, the lines of road of the Florida Railway and Navigation Company being among this number, and the intention of the State of Florida to collect such taxes was made manifest thereby.

To those portions of complainant's bill claiming there was no lien on the lines of road acquired by the Florida Railway and Navigation Company at such time of acquirement, and that chap. 3558, Laws of Florida, was unconstitutional and void, in this it did not provide for a uniform and equal rate of taxation and did not secure a just

valuation and assessment for all classes of property, and that the State's power of taxation was exhausted over the property when the assessment was made, as shown by Exhibit "C," and those portions of complainant's bill denying the right of the State to levy a tax or additional tax in the values of said property of the Florida Railway and Navigation Company, as set forth in complainant's bill, and to those portions of said bill relating to the issue of $10,000,000 of bonds and the disposition of $5,000,000 thereof, and the foreclosure and sale of the properties of the Florida Railway and Navigation Company and the purchase of the same by W. B. Cutting, agent, as showing any reason why the taxes sought to be collected by the levy and proposed sale herein are not due to the State of Florida, these defendants claim all the benefit they could have from a demurrer interposed thereto.

Defendants, being so advised, deny that complainant in this proceedings has any right to recover the $140,812.47 alleged to have been unlawfully collected by said Barnes, comptroller, and
179 deny that the same were unjustly or unlawfully collected.

Defendants admit that chapter 4703, Laws of Florida, was passed and approved as alleged.

Defendants, further answering, admit — under the authority of above act and the acts to which it relates they have seized and levied upon the property of complainant, as shown by the comptroller's warrant annexed to the bill of complaint, to pay the taxes due on the same for the years 1879, 1880, and 1881, and legally assessed upon the same for said years, and that they will sell the said property of complainant for the said purpose of paying such due and unpaid taxes for said years, as shown by the published notice annexed to complainant's bill, unless the taxes so assessed against the property of complainant for the said years 1879, 1880, 1881 be paid, together with the costs and expenses, before such sale.

And these defendants, further answering, deni*es* all and all manner of unlawful combinations and confederacy wherewith *he is* by said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for *this* defendant- to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of *this* defendant-; all of which matters and things *this* defendant- *is* ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with *his* reasonable costs and charges in this behalf most wrongfully sustained.

WM. B. LAMAR,
Attorney General, &
CHAS. B. PARKHILL,
Sol'rs for Defendants.

180 STATE OF FLORIDA, }
Leon County. }

William D. Bloxham, comptroller of accounts in — for the State of Florida, and John A. Pearce, sheriff in and for said State and county, being duly sworn, says the matters alleged in the foregoing answer of knowledge are true, and those alleged on information they believe to be true.

W. D. BLOXHAM,
Comptroller.
JOHN A. PEARCE,
Sheriff Leon Co., Fla.

Sworn to and subscribed before me this 2nd day of January, A. D. 1893.

B. B. WILSON,
Notary Public, State of Florida at Large. [SEAL.]

On the 2nd day of September, 1893, complainant, by its attorney, filed its replication to the answer of defendants:

In Circuit Court of Florida, Second Judicial Circuit, Leon Co. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD CO. }
vs. }
WILLIAM D. BLOXHAM, Comptroller, &c., and JOHN A. PEARCE, Sheriff, &c. }

The replication of The Florida Central and Peninsular Railroad Company, complainant, to the answer of William D. Bloxham, comptroller, &c., and John A. Pearce, sheriff, &c., defendants.

181 This repliant, saving and reserving unto *him*self all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that *he* will aver and prove *his* said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* hath already prayed.

On the 25th day of November, A. D. 1893, the following decree was made and entered in said cause by the Honorable J. F. White, judge of the third judicial circuit, the judge of the second circuit being disqualified:

In Circuit Court, 2nd Judicial Circuit of Florida in and for the County of Leon. In Chancery.

THE FLORIDA CENTRAL & PENINSULAR Railroad Company
vs.
WILLIAM D. BLOXHAM, Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.
} Bill for Injunction & Relief.

The above-entitled cause, coming on to be *heard* finally heard by the undersigned judge of the 3rd judicial circuit (the judge of the
182 2nd judicial circuit being disqualified), *and* was heard upon bill and answer, and after argument by John A. Henderson, solicitor for the complainant, and William B. Lamar, attorney general for the State of Florida, solicitor for the defendants, and the court, being fully advised of its opinion herein, doth hereby order, adjudge, and decree as follows, to wit:

1st. That the several lines of railroad now owned by complainant and described in said bill of complaint, to wit, "the line of railroad from Lake City to Quincy, Florida, with branches to Monticello and St. Marks, Florida; the line of railroad from Lake City to Jacksonville, Florida; the line of railroad from Fernandina to Cedar Keys, Florida; the line of railroad from Waldo to Ocala, Florida, and the line of railroad from Ocala to Tampa bay, Florida," are and were in A. D. 1885 each and all subject to taxation as other property in the State of Florida, even though said lines of railroad were built on the lines indicated by the general internal-improvement act of A. D. 1855–'6, chap. 610, Laws of Florida, and under the provisions contained in said general internal-improvement act and at the time or times severally alleged in complainant's bill.

2nd. That the several lines of railroad aforesaid, with the branches aforesaid, were not exempt from taxation for the years A. D. 1884, A. D. 1883, and A. D. 1882, and that the taxes thereon, demanded of the Florida Railway and Navigation Company thereon, under an assessment made in A. D. 1885, and paid under protest as alleged by complainant, were lawfully exacted and collected from said company, notwithstanding portions of some of the aforesaid lines of railroad or all of the same were constructed under the provisions of the general internal-improvement act of the State of Florida,
183 chap. 610, Laws of Florida, and notwithstanding said lines of railroad were built on the lines indicated thereby and therein.

3rd. That the said lines of railroad properties of complainant are subject to taxation for the year A. D. 1886, and that complainant's prayer that defendants be enjoined from assessing and collecting the same for the year A. D. 1886 be, and the same is hereby, denied.

4th. That the taxes now attempted to be collected on the said several lines of railroad owned by the complainant by the defendant William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, under assessments made thereon in A. D.

1885, by virtue of a statute passed A. D. 1885, chapter 3558, Laws of Florida, on the aforesaid lines of railroad and branches, now the property of the complainant, but which were so assessed on the same for the years A. D. 1879, A. D. 1880, and A. D. 1881, and which were assessed then as the property respectively of the Jacksonville, Pensacola and Mobile Railroad, the Florida Central *and* Railroad, and the Transit & Peninsular Railroad Companies, were and are not liens on said several lines of railroad for the several years aforesaid for which said assessments were made, and were not and are not assessable against the Florida Railway and Navigation Company; that the said statute under which the assessments were made for the years last aforesaid was a special statute for the collection of general revenue and did not provide or attempt to provide a uniform, equal, and just assessment or collection of taxes for the years A. D. 1879, A. D. 1880, and A. D. 1881, and that so much and that such part of said statute of A. D. 1885, chap. 3558, Laws of Florida, as attempts to provide for and assessment and collection of taxes for the years A. D. 1879, 1880, and 1881 is, as to the complainant's said property, unconstitu-
184 tional and void, and the State of Florida, by its legislature, having repeatedly and expressly limited its right to assess property, omitted from assessment for taxes for more than three years next preceding the assessment thereof the said assessments so made as aforesaid or attempted to be made on the said properties of the complainant for the years A. D. 1879, A. D. 1880, and A. D. 1881, under the provisions of the act aforesaid, and the said warrant and tax levy is hereby adjudged and decreed to be unequal, unlawful, unconstitutional, and void.

5th. And that the said defendants, the said William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined from selling or attempting to sell the said several lines of railroad of complainants or any part or parts thereof under said assessment for the years A. D. 1879, A. D. 1880, and A. D. 1881, and from in any way or manner interfering with or attempting to collect the said taxes for said years last aforesaid.

5th. That defendants pay the cost of this cause, to be taxed by the clerk of the circuit court of Leon county, Florida.

Ordered, adjudged, and decreed, at chambers, at Live Oak, in the 3rd judicial circuit of Florida, this the 25th day of November, A. D. 1893.

J. F. WHITE,
Judge of the 3rd Judicial Circuit.

On the 22nd day of May, 1897, the following mandate of the supreme court of the State of Florida was made and is of record in the minute book of said circuit court No. 10, page 234:

185 *Mandate from Supreme Court.*

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree and order of the said circuit court were rendered November 25th, A. D. 1893, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January term of said supreme court, holden at Tallahassee, A. D. 1895, the said cause came on to be heard before the said supreme court on the said transcript of the record and was argued by counsel; in consideration whereof it was considered by said supreme court that the said decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing an injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct a return of the taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, be, and is hereby, affirmed except that portion which holds the line of railroad of said appellee company from Ocala to Tampa subject to taxation aforesaid; the said decree be, and is hereby, reversed in so far as it makes subject to taxation

186 for the years named that portion of the line of railroad of said appellee company from Ocala to Tampa, described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa. So much of said decree as holds that the statute under which the assessments were made and under which proceedings are being taken by the appellants to collect taxes of the appellee company is a special statute for the collection of general revenue is unconstitutional and void be, and is hereby, reversed. So much of the decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the appellants from selling or attempting to sell the same, under the assessment aforesaid, or any part thereof, for the taxes of said years, and from in any manner interfering with or attempting to collect said taxes, be, and is hereby, reversed, and the cause is remanded for further proceedings in accordance with the opinion of the court filed herein; and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of seventy-three dollars and thirty cents; therefore—

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said

supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, A. D. 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court, State of Florida.

187 On the 22nd day of May, 1897, the following mandate of the supreme court of the State of Florida was made and is of record in the minute book of said circuit court No. 10, page 235:

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree of said circuit court was rendered February 26, A. D. 1896, as by the inspection of the transcript of the record of said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January term of said supreme court, holden at Tallahassee, A. D. 1897, the said cause *coming* on to be heard before the said supreme court on the said transcript of the record, and was argued by counsel, in consideration whereof it was considered by said supreme court that the said decree overruling the demurrer will be reversed and the cause remanded with further directions that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court, upon which a mandate will again issue; and it is further ordered that the appellee,
188 within ninety days after the decree is entered by the said circuit court, may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahoochee and branches. It is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, which costs amount to the sum of fifty-seven and $\frac{50}{100}$ dollars; therefore you are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, A. D. 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court of Florida.

On the 19th day of June, 1897, the following decree was made and entered by the court:

In the Circuit Court for Leon County, in the Second Judicial Circuit of the State of Florida. In Chancery.

THE FLORIDA CENTRAL — PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County.

189 This cause came on to be further heard, and, in obedience to the mandate of the supreme court of the State of Florida and upon motion of counsel for the defendants, it is ordered, adjudged, and decreed as follows, viz:

1. That the decree heretofore made in this cause on the 20th day of February, A. D. 1896, overruling the demurrer to the plaintiff's supplemental bill in the nature of a bill of review, be, and the same is hereby, reversed and set aside, and that said demurrer be sustained and said bill be dismissed, at plaintiff's costs.

2. That so much of the decree heretofore made in this cause on the 25th day of November, A. D. 1893, as holds the lines of railroad therein described subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refuses an injunction against the assessment and collection of taxes for 1886, and refuses to direct a return of taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, except that portion which holds the line from Ocala to Tampa subject to taxation, as aforesaid, is affirmed.

3. That said decree is reversed in so far as it makes subject to taxation for the years named that portion of the line from Ocala to Tampa described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa.

4. That so much of said decree as holds that the statute under which the assessment was made and under which the proceedings are being taken by the defendants to collect taxes of the complainant is a special statute for the collection of general revenue and unconstitutional and void is also reversed.

5. That so much of said decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein
190 *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the defendants from selling or attempting to sell the same under the assessment aforesaid or any part thereof for the taxes for the said years, or from in any manner interfering with or attempting to collect said taxes, is also reversed.

6. That the said defendants, W. D. Bloxham, the comptroller, &c., and John A. Pearce, as sheriff, &c., their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined and restrained from selling or attempting to sell that portion of the plaintiff's railroad from Jacksonville to Tampa and described in the bill of complaint as the line from Wildwood to Plant City, and the line from Plant City to Tampa under said assessment for

the years 1879, 1880, and 1881, and the line from Ocala to Wildwood under said assessment for the years 1879 and 1880 and 1881, and the line from Ocala to Wildwood under said assessment for the years 1879 and 1880.

7. That the plaintiff pay the costs of this suit and be taxed by the clerk.

Ordered and decreed at Live Oak, Fla., at chambers, on this 19th day of June, A. D. 1897.

JNO. F. WHITE,
Judge 3rd Judicial Circuit of Fla.

On the 18th day of Sept., A. D. 1897, complainant filed its petition for leave to file a bill of review.

191 (Copy.)

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

To the honorable the judge of the circuit court of the third judicial circuit of Florida, sitting in the place of Hon. John W. Malone, judge of the second judicial circuit aforesaid, disqualified:

The petition of the Florida Central and Peninsular Railroad Company, a corporation organized and existing under the laws of the State of Florida, would respectfully show unto your honor:

That on or about the 2nd day of November, A. D. 1892, your petitioner filed its bill of complaint in the circuit court of Leon county aforesaid against William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, in the words and figures following, to wit:

In the Circuit Court of the Second Judicial Circuit of Florida in and for the County of Leon. In Chancery.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and JOHN A. PEARCE, as Sheriff of Leon County, Florida.

To the honorable the judge of said court:

192 The Florida Central and Peninsular Railroad Company, the complainant, by its solicitors, brings this its bill of complaint against William D. Bloxham, as the comptroller of public accounts of the State of Florida, and against John A. Pearce, as sheriff of Leon county, Florida, defendants; and thereupon, humbly complaining, shows unto your honor:

That the complainant is a corporation duly organized under the laws of Florida, under letters patent of date 17th November, 1888, and owns a line of railroad in said State which is composed of the several lines of road organized and constructed under the authority of the laws of Florida, as hereinafter set forth.

A.

Of a line of railroad from Jacksonville to Lake City, in the State of Florida, which was built by a company known as the Florida, Atlantic and Gulf Central Railroad Company, duly chartered and organized under the Laws of the State of Florida, chapter 481 thereof, and the several acts amendatory thereof.

B.

Of a line from Lake City to Quincy, in the said State, with a branch from Drifton to Monticello, both in the county of Jefferson thereof, which was built by a company known as the Pensacola and Georgia Railroad Company, duly chartered by and organized under chapter 484, Laws of Florida, and the several acts amendatory thereof.

C.

Of a line of road from Tallahassee to St. Marks, in said State, which was built by a company known as the Tallahassee Rail-
193 road Company, and chartered by and organized under the Laws of Florida, chapter —, and the acts amendatory thereof.

D.

Of a line of road from Quincy to Chattahoochee, in said State, which was built by a company known as the Jacksonville, Pensacola and Mobile Railroad Company, chartered by and organized under the Laws of the State of Florida, chapter 1716 of said Laws, and the acts amendatory thereof.

E.

Of a line of road from Fernandina to Cedar Keys, in said State, built by a company known as the Florida Railroad Company, which was chartered by and organized under chapters 482 and 729 of the Laws of Florida and the several acts amendatory thereof.

F.

Of a line of road from Waldo to Ocala, in said State, which was built by a company known as the Peninsular Railroad Company, chartered by and organized under chapter 729 and its amendatory acts aforesaid.

G.

Of a line of road from Ocala to Wildwood, in said State, which was built by a company known as the Tropical Florida Railroad Company, under the authority of chapter 729 aforesaid.

H.

Of a line of road from Wildwood to Tavares, which was built by a company known as the Leesburg and Indian River Railroad Company, organized under the General Laws of Florida, chapter 1987, and the acts amendatory thereof.

194 J.

Of a line of road from Jacksonville to Hart's Road, which was built by a company known as the Fernandina and Jacksonville Railroad Company, also organized under chapter 1987 of the general law on the subject of railroads and canals, and its amendatory acts.

K.

Of a line from Wildwood to Plant City, built by complainant on its route to the waters of Tampa bay.

L.

Of a line from Tavares to Orlando, built by a company known as the Tavares, Orlando and Atlantic Railroad Company.

M.

And of a line of railroad from Plant City to Tampa, in completion of its line to the waters of Tampa bay, and built by complainants.

That the several roads as above indicated were constructed and in operation about as follows:

A, B, C,	as above designated,	for years prior to 1865.	
D,	"	"	in 1869–'71.
E,	"	"	for years prior to 1865.
F,	"	"	in 1877.
G,	"	"	" 1881.
H,	"	"	" 1883.
J,	"	"	" 1883.
L,	"	"	
K,	"	"	" 1887.
L,	"	"	" 1887.
M,	"	"	" 1891.

195 That the several acts under authority of which these several lines of railroad were constructed are hereby adopted by this complainant as parts of its said bill, with the usual reference to their several provisions as though fully set out herein.

That in the year A. D. 1855, which was prior to the construction of any of the aforesaid lines of railroad, the legislature of the State of Florida, under the authority of the constitution of said State, passed a law commonly and hereafter called the internal-improvement act of Florida and numbered as chapter 610, Laws of Florida, approved Jan'y 6th, 1855.

That the constitution of the State of Florida in force at the time of the passage of said act, chapter 610 aforesaid, authorized and directed the legislature to provide for and encourage a liberal system of internal improvements.

That the act aforesaid, chapter 610, created a public fund, called the internal-improvement fund of Florida, and vested the same in certain trustees, and invested the funds with a large and very val-

uable quantity of lands, and declared the construction of certain railroads and canals within the State of Florida as works of public improvement which should be aided by the State out of said fund.

That at the date aforesaid the State of Florida, with its area of 50,000 square miles, had an aggregate population of less than two to the square mile, two-fifths of whom were slaves; that she had not one mile of railroad propelled by steam, and only one tramway of 22 miles pulled by mules; that her population was as poor as it was sparse, and her people with their own available resources were
196 totally unable to perfect any works of improvement in the way of encouraging settlement and facilitating the development of its resources and the utilizing of its commercial advantages; that the approbation of the people was given to the grant of all constitutional aid to the works of internal improvement so, as aforesaid, declared as proper to be aided by the provisions of said act.

The lines of railroad hereinafter described as A, B, C, D, E, F, G, and K & M were those constructed and authorized so to be by this act and their respective charters, in compliance with the fourth section of said act, and were parts and parcels of those lines therein declared to be proper improvements to be aided from the State fund in the manner indicated in said acts.

That of the several railroad companies hereinbefore referred to there had been chartered previous to the date of this act only the Florida, Atlantic and Gulf Central Railroad Company, the Tallahassee Railroad Company, the Pensacola & Georgia Railroad Company, and the Florida Railroad Company, but each of these companies chartered by the legislature and any that might thereafter be chartered, any portion of whose routes might be within the lines or routes so declared to be proper improvements for aid, as aforesaid, should have the rights and privileges of constructing that part of the said lines embraced in their charters, and all the portions of the lines of complainant, which include all of its said line of road except so much thereof as is built between Wildwood and Orlando and between Jacksonville and Hart's Cross-roads, were authorized to be built within the said lines or routes entitled to receive the aid given by said act and its amendments.

Your orator would show that by reference to said internal-
197 improvement act and the said act incorporating the said railroads it will appear that the State of Florida did not reserve any right to alter or amend or repeal said acts, nor was there any law then in force prior to their enactment which authorized such repeal, alteration, or amendment, nor was there any law applicable to the said railroads inconsistent with the provisions of said internal-improvement act and said acts of incorporation, with regard to the tax on railroad property and the exemptions thereon, and it was the intent of the legislature at that time, and the people of the State and said legislature have shown the said intention ever since (as by reference to the various laws touching the exemption of railroad property from taxation will appear), that the exemption contained in said internal-improvement act and said acts of incorporation should be continued in full force and effect during the term prescribed in

said acts, and particularly should so continue in favor of the road from Fernandina to Cedar Keys, with branch to Tampa.

That the act, chapter 3558, authorizing the assessment of taxes on certain railroad property liable to pay the same for the years 1879, 1880, and 1881, did not specify the property of the Florida Railway and Navigation Company and its constituents as liable, and the same was in fact exempted at the time of the passage of said act, and the State officers had no authority to levy upon said property for such taxes.

Your orator would further show that although the State constitution of 1868 enacted that no railroad property thereafter should be exempted from taxation, yet that said State constitution was inconsistent with the Constitution of the United States, in that it sought to deprive the companies then owning the property now be-
198 longing to the complainant of vested contract rights to such exemption, and that said State constitution abrogated the contract at that time in force between the State and the said railroad companies and illegally impaired the obligations imposed thereby upon the State of Florida, and is therefore null and void.

That among the grants given to said lines of road by said acts, and so given in aid of the construction of said lines of road, were:

The exemption of the capital stock of any railroad company accepting the provisions of said act forever from taxation; and

The exemption of the roads, their fixtures and appurtenances, including their shops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers or for the repair and maintenance of the roads, from taxation while the roads are under construction and for the period of thirty-five years from their completion.

The line of road, herein designated as "A," between Jacksonville and Lake City was built by its company, the Florida, Atlantic and Gulf Central Railroad Company, which accepted the provisions of said act, according to the provisions of the act, and was accepted by the trustees of said internal-improvement fund as a completed (line) on the — day of ——, A. D. 1866.

The Pensacola & Georgia Railroad Company likewise accepted the provisions of said act for its entire line to Pensacola and built the line of railroad, designated as "B," between Lake City and Quincy, with branch to Monticello, and acquired the line of the Tallahassee railroad between Tallahassee and St. Marks, "C," which was also built in accordance with the terms and requirements
199 of said internal-improvement act, and they were accepted as a completed road by the trustees of the internal — fund on the — day of ——, A. D. 1866, and incorporated under the name of the Florida Central Railroad Company, and as such and until as hereinafter stated the said Florida Central Railroad Company owned and operated the lines of this complainant's road, "A," from Jacksonville to Lake City, as aforesaid.

B. The Pensacola & Georgia railroad, which included the road to St. Marks and all its property, for like default was in like manner seized and legally sold on the second day of March, A. D. 1869, to

F. Dibble and associates; and subsequently, under the provisions of said internal-improvement act and the provisions of an act entitled "An act to perfect the public works of this State," being chapter 1716 of the Laws of Florida, and the acts amendatory thereof, the said associates or their assigns were made a body corporate and entered as owners into the possession of the line of complainant's railroad from Lake City to Quincy and from Drifton to Monticello and the road from Tallahassee to St. Marks, and owned and operated the same under the name of the Jacksonville, Pensacola & Mobile Railroad Company until as hereinafter set forth.

E. The Florida railroad, with all its property of every kind, which is so much of the complainant's line of road as lies between Fernandina and Cedar Keys, was for like default in like manner seized and sold on the first day of November, A. D. 1866, to Isaac K. Roberts and his associates, who, under the provisions of the said internal-improvement act, chapter 610, Laws as aforesaid, and of chapter 482, Laws of Florida, and its amendatory act-, became the owner-
200 of said line of road, and thence after until as hereinafter stated operated the said line of road as a body corporate under the name of the Florida Railroad Company.

That between the years A. D. 1871 and 1873 the Jacksonville, Pensacola & Mobile Railroad Company built and completed and thence after until as hereinbefore stated operated the portion of complainant's line of road herein designated as "D" and being that part thereof which is between Quincy and Chattahoochee and which is upon the line or route declared by act, chapter 610, to be proper to be aided by the provisions of said act.

That under and by virtue of the provisions of the charter of the Florida Railroad Company, chapter 729, Laws of Florida, the president and directors of the said Florida Railroad Company on the 22nd day of April, A. D. 1876, set off the construction of that portion of their line and of the line of this complainant which is between Waldo and Ocala to persons desirous of constructing the same, and such persons, under the authority therein given to have a distinct organization, associated themselves together as a body corporate under the name of the Peninsular Railroad Company, which built and thence after and until as stated herein operated that portion marked "F" of complainant's line of railroad between Waldo and Ocala, and which was completed on the first day of January, A. D. 1879.

That by the same authority the proper officers of the Florida Railroad Company, on the 22nd day of January, A. D. 1881, set off to persons desiring to construct the same the right of constructing so much of its said line of road as was between Ocala and the waters of Tampa bay, and such persons, under the authority therein given to have a separate organization, associated themselves together
201 as a body corporate under the name of the Tropical Florida Railroad Company, and built that portion of said line and of this complainant's line which lies between Ocala and Wildwood, and is marked "G," in the years A. D. 1881 and 1882.

That under the terms of the statutory mortgage created by chap-

ter 1716, Laws of Florida, all that portion of complainant's line between Jacksonville and Chattahoochee, and including the branch to Monticello and the St. Marks road, was, on the twenty-fifth day of September, A. D. 1879, sold under decree of foreclosure to Edward J. Reed, who, together with his associates, organized a company under the general laws of the State of Florida, known as the Florida Central and Western Railroad Company, which latter company was by deed of the said Reed dated 28th February, 1882, invested — all the rights, privileges, and immunities covered by said mortgage and of the charters and statutory benefits of the several constituent companies, but without becoming in any way obliged to pay any of the debts or obligations of any such companies.

On the 30th day of March, A. D. 1880, the Fernandina & Jacksonville railroad, being that portion of complainant's line which is between Jacksonville and Hart's Cross-roads, and herein marked as "J," was built by a company having the name of Ferdn & Jax, organized under the general law, chapter 1987, of the State of Florida.

On the 18th day of January, A. D. 1872, the name of the Florida Railroad Company was changed to the Atlantic, Gulf & West India Transit Company by chapter 1918, Laws of Florida.

Under a decree of the circuit court of the United States for the
202 northern district of Florida, in a suit between Doggett, receiver, and the Atlantic, Gulf & West India Transit railroad, for the enforcement of the payment, to the use of the trustees of the said internal-improvement fund, of a sinking fund for the redemption of certain of the bonds of the Florida Railroad Company which were issued under the provisions of the said act, chapter 610, and which had not been returned by the sale of said line of road in 1868, as aforesaid, but were still outstanding, so much of your orator's road as then belonged to said company, being that portion which lies between Fernandina and Cedar Keys, with all of its property and franchises, was sold by J. B. C. Drew, master, to Edward N. Dickerson and C. D. Willard, trustees, and thereupon these trustees, for themselves and their associates, formed the Atlantic, Gulf & West India Transit Company under the said act of 1853, chapter 482 and chapters 610 and 729, and the act of January 25th, 1869, respectively. This company's name was changed in 1881 to the Florida Transit Railroad Company.

On the 22nd day of December, A. D. 1882, the following companies were consolidated into one company, according to the laws of Florida, viz: The Atlantic, Gulf & West India Transit Company, the Peninsular Railroad Company, the Tropical Florida Railroad Company. The company thus formed was called the Florida Transit & Peninsular Railroad Company.

On the 29th day of February, A. D. 1884, the Florida Transit & Peninsular Railroad Company, the Florida Central & Western Railroad Company, the Fernandina & Jacksonville Railroad Company, and the Leesburg and Indian River Railroad Company were consolidated into one company. The company so formed was called the Florida Railway and Navigation Company.

203 The Florida Railway and Navigation Company built its line of railroad from Wildwood to Plant City and completed the line begun by the Leesburg and Indian River Railroad Company to Tavares.

The several companies thus consolidated had bonded indebtedness incurred by construction and operation, as aforesaid, and severally secured by deed of trust on their respective lines, which were outstanding, as follows:

The Florida Transit Railroad Company on May 10th, 1881, issued 1,000,000 of 6% bonds, due March 1st, A. D. 1911.

The Peninsular Railroad Company on August 11th, 1878, issued $350,000 of 7% bonds, due August 1st, 1900.

The Fernandina and Jacksonville Railroad Company on 9th March, 1882, issued $2,808,000 of 6% bonds, due March 1st, 1922.

For defaults in the payment of the interest on which bonds it was provided in each case that the entire indebtedness should, at the election of the trustees of the respective bondholders, become due and payable, principal and interest. To secure the consolidations of the several companies, as herein stated, into the Florida & Western Railroad Company and of other companies into the Florida Transit & Peninsular Railroad Company, mutual concessions were necessary, and your orator avers that each of said changes and consolidations were made by radical changes in the holdings of the capital stock of said company, and that with each and every of such changes and consolidations parties not before interested in the one and the other of said constituent companies thus became *bona fide* holders of legal estates in such companies as from the respective dates of said consolidations and changes, and entitled to the protection of the existing laws
204 to their property from and after the respective dates of such several acquisitions, and in like manner it is true that the consolidations of the aforesaid several companies into the Florida Railway and Navigation Company was accomplished with like changes of interest and with the acquirement of new interests by the several holders of the capital stock of said last company, and holders thereof from the date of such consolidation became *bona fide* holders of proprietary interests in each of said constituent properties, and which interests were then acquired subject to the laws of such property as they then existed and entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property; that such changes of holdings were equal to more than one-half in value of each and every of said properties.

Your orator avers that the effect of the legislation hereinbefore set forth was an exemption of all its lines of road which were built on the lines indicated in the 4th section of the internal-improvement act from taxation while under construction, and for a period of thirty-five years from the date of the completion of the several integral parts, as herein set forth, none of which limitations of time have expired; that the exemption as aforesaid was an immunity given as a consideration for the construction of the said sev-

eral lines of railroad and was in the nature of an additional value to said roads over and above their values as determined by the volume of business to be done by them or the earnings their owners received from such sources, and your orator avers that such immunity was an inducement, and a controlling inducement, to the investment of the moneys which were necessary to be expended in the construction of each and every the parts aforesaid of said
205 separate lines of road on the routes indicated in said internal-improvement act.

By reason of which premises your orator avers that the exemption of said lines of railroad from taxation for the several periods of time, as alleged, became, by contract of the State for the consideration aforesaid, a part and parcel of the property value of said roads and was not intended to be and never was in fact a personal privilege or gratuity to the corporations respectively that built said lines of road or either or any of them; that the primary purpose of this legislation was the construction of the works belonging to the system devised by the said internal-improvement act, chapter 610, Laws of Florida, and not the extension of aid or bounty to the corporations that had or might acquire the right to construct the works designated therein, and this exemption became a part of the value of the property of the railroad which your orator acquired in its acquisition of each and all of its said lines of the routes included in said system; that this was the law of the property as declared by the courts of the State of Florida when the Florida Railway and Navigation Company acquired the same.

Your orator charges that neither the said internal-improvement act, chapter 610, nor either of the acts amendatory thereof wherein was granted the exemption from taxation on the properties of your orator, nor either of the acts under which said several lines of road were constructed, contained any provision for or any reservation of power in the legislature of Florida to alter, amend, or repeal the said immunity of exemption from taxation as herein set forth. Wherefore it says that any and every act of the State of Florida, either through amendment of its constitution or by act or resolution of its legislature in so far as it was thereby attempted to re-
206 voke, repeal, or annul the said exemption from taxation, was in violation of the rights of your orator as guaranteed by the Constitution of the United States, which does not permit vested rights under previous contracts to be impaired by subsequent enactments.

That the act or resolution under which the said Barnes claims to assess back taxes for the years 1879, 1880, and 1881 upon the Florida Railway and Navigation Company was not a law of the State of Florida, and, if a law, does not specify that company and was not applicable to it, and the act of such assessment, being in violation of your orator's previously conceded and enjoyed exemption, is null and void.

That this exemption from taxation was accorded the several portions of your orator's line until the year A. D. 1885, when said William D. Barnes, in his capacity of then comptroller of public accounts for

the State of Florida, made an assessment of taxes upon the several companies then controlling the several parts of this line for State and county purposes. A copy of this assessment is hereto attached and marked Exhibit A and made a part of this bill for all purposes of reference.

That this assessment was null and void, as appears on the face of it, for, among others, the following several reasons:

The Florida Railway and Navigation Company did not exist, had not been created, and could not and did not own the property assessed or any property in the State of Florida or elsewhere during the years 1881, 1882, or 1883, or either of them, nor in 1884, except as herein stated.

The assessment was made in Gadsden county against the Florida Railway, Navigation and Telegraph Company; that in other counties there was no assessment of values as in Baker and
207 Wakulla counties; that there *was* apparent misnomers and failures definitely to assess properly *pro ratas* of rolling stock, as in the assessments of Alachua county, although the assessment that was made therefor was upon an aggregate in excess of the valuation of the entire property.

The assessment made for Clay county exhibited an error of $7,000 in the aggregate of valuation; that the assessment was confused and misleading in stating and scheduling rolling stock as realty, as in Levy, Gadsden, Suwannee, and other counties, and as personal property, — in the counties of Duval, Baker, Bradford, Leon, and other counties.

That the assessment was not upon a uniform basis of value for the same kinds of property, as in the instance of the assessment of certain lines of telegraph of your orator at $50, when, for the same years, the telegraph lines of the Western Union Telegraph Co., whose lines were as good or better than those of your orator, were only assessed at $10 per mile.

The line of railroad then belonging to the said Florida Railway and Navigation Company was on the 30th day of May, A. D. 1885, advertised for sale by the sheriff of Alachua county by virtue of a warrant issued by the said William D. Barnes, as comptroller aforesaid, and the said sheriff and the said comptroller threatened to sell the said property of said company for the said taxes so assessed against it for the years 1881, 1882, 1883, and 1884; that not only was it the intention of said officers to make a sale of said railroad on said account, but your orator charges that they then and on that day distinctly stated to its officers and agents that it was the intention of the executive of the State to forcibly put the purchaser of said road at such sale into the possession of said road; whereupon, under the duress of the great wrong and injury that was then unlawfully
208 threatened to said property and because the said Florida Railway and Navigation Company was powerless to protect itself from the wrong in the premises, the said company paid to the defendant, the State comptroller, as aforesaid, under protest that it was arbitrarily, illegally, and forcibly extorted from it, the amount of the taxes which had been assessed, as aforesaid, against it and its

constituent' properties, amounting to the sum of $140,812.47, and your orator attaches hereto as Exhibit "B" a copy of the receipt of the same and the protest of said company against the payment, as aforesaid, signed by William D. Barnes, comptroller, as aforesaid, and which it makes a part of this its bill.

That on the eighteenth day of October, A. D. 1885, the said William D. Barnes made an assessment on the lines of the Florida Railway and Navigation Company under the authority of an act of the legislature of the State of Florida, being chapter 3558 of the same, approved on the 12th day of February, A. D. 1885, for taxes on said lines of road of the State of Florida and the several counties, as indicated in a copy of said assessment, which is hereto attached and marked Exhibit "C" and which is made a part of this bill, for the years 1879, 1880, and 1881.

And your orator charges that said assessment is illegal and unjust and without any true warrant of law.

That the pretended act authorizing the same is unconstitutional and in violation of the contract and other rights of the Florida Railway and Navigation Company, and of its stockholders and of its bondholders and each and every of them, and of your orator succeeding to the rights of such bondholders, as hereinafter stated, and is likewise wrongful, injurious, unjust, and oppressive to your orator, and it specifies among other reasons that the same is so—

That when the Fla. R'y & Nav. Co. acquired its said line of road there was no lien in existence of such an assessed tax, it had
209 no notice of the existence of any such claim as is made by the State in this last assessment upon its property, and that it acquired its said property free of such lien; that by the law which was in force when it acquired the line of its road, which includes the portion of its line covered by this assessment, there was no assessment thereon for the years 1879 or 1880, and an assessment thereon for 1881 which has been paid, as aforesaid; that the law so in force then expressly prohibited the taxing power from taxing your orator's road, or any other property in the State, even in case the same had been improperly omitted from the taxing rolls, and had thus improperly escaped taxation for more than three previous years from the time of making an assessment.

Your orator further avers that there were properties of large values, to wit, lands in the counties of Madison, Suwannee, Alachua, and Columbia, and in other counties of this State, and lands elsewhere in the State, which were improperly omitted from assessment for taxes during the years A. D. 1879, 1880, and 1881, and each of them, and that the act aforesaid, to wit, chapter 3558, Laws of Florida, was unconstitutional and void in that the said chapter 3558 did not provide for a uniform and equal rate of taxation; and, further, that it did not attempt to secure a just valuation and assessment for all classes of property, but was enacted to reach only property of the class with that of your orator, and there was no law at the time of its passage for reaching the other classes of property, as alleged in this bill, which were omitted from assessment, and which thereby escaped taxation for said years, nor has any law been since

enacted to correct the inequalities in assessments and to remedy the wrong done to your orator's property.

Your orator alleges that at the time the Florida Railway and Navigation Company was organized as a corporation and acquired its line of road, as aforesaid, it found the properties, which were
210 then in existence and which are now of your orator's lines of road assessed for the year A. D. 1880, as in Exhibit "C," hereto attached, will more fully appear, and your orator insists that it was an exhaustion of the State's and the tax-making power over the property when the assessment was made, and the time provided by law for correcting errors therein had expired, which time has long since elapsed in so far as the same could be made a lien on the property itself, and your orator avers that the right to levy any additional tax on the values of said property, if it exists at all, exists only as against the owners at the time of the property, and that the same is not now a lien on the property of your orator, and that any law of subsequent enactment which attempts to create a lien on this property in the hands of purchasers for value is void.

Your orator further shows to your honor that on the first day of July, A. D. 1884, the Florida Railway and Navigation Company made an issue of $10,000,000 of first-mortgage coupon bonds and made its certain deed of trust to all of its property, including the several lines of railroad as designated herein, to secure the payment of said bonds, principal and interest, and that by the terms of said bonds and mortgage it was provided that on defaults in payment of interest of said bonded indebtedness the whole principal and interest of said bonds should become immediately due and payable; that it disposed of, for value and to *bona fide* holders, more than $5,000,000 of said bonds; all of which was done and accomplished prior to the date of the assessment as last herein complained of by the said William D. Barnes.

That one of the purposes of said bond issue was to retire underlying bonds of the several constituent companies forming the F. R. & N. Co., as hereinbefore stated, but that the purpose so to do had been entirely futile, and such underlying bonds were not redeemed.

211 That on the 26th day of October, 1885, for the failure upon the part of the said Florida Railway and Navigation Company to pay to W. Bayard Cutting the amount of money hereinbefore stated to have been paid to W. D. Barnes, comptroller of the State of Florida, on account of the taxes as paid and which sum was borrowed from the said W. Bayard Cutting for that purpose and judgment at law thereupon, and for defaults in the payment of the interest of its consolidated bonds and for the payment of the interest on each of the underlying bonds as hereinbefore stated, which defaults had continued the required time and for the adjudgment by the said several trust companies; that by reason of said defaults and the continuation thereof the whole of the said bonded indebtedness, principal and interest, was due and then payable; the lines of the railroad of the Florida Railway and Navigation Company, as it then existed, *was* upon bills duly filed by the said W. Bayard Cutting and by the

said several trust companies, representing the holders of said bonds, in the circuit court of the United States for the northern district of Florida, for the foreclosure of said liens and for the sale of the property thereunder.

That on that date H. Rieman Duval was appointed receiver of the said court, and took the said property into his hands as receiver; that afterwards, to wit, on the — day of March and the — day of July, A. D. 1889, under *duress* (decrees) rendered in each of the said several causes, the entire properties were sold severally under their first liens and as a whole under the lien of the mortgage created by the Florida Railway and Navigation Company.

That the amounts realized from said sale were far short of even the accumulated interest on said indebtedness, and, with the exception of one case, was far less than the interest on each particular indebtedness.

212 That W. B. Cutting, as agent, bought the said property, and he and his associates organized the complainant company in this cause, and the company was admitted into the possession of the property so bought, all terms and conditions being previously complied with, on the first day of May, A. D. 1889, and has remained in possession since then.

That the rights and interest of the complainant is the said several properties relates back to the date of the said several respective mortgages created as aforesaid, and that your orator has thus become entitled to all of the assets of said company, included in which is the right to recover the amount — $140,812.47, unlawfully collected by the said Barnes, as comptroller, from the Florida Railway and Navigation Company, and to any and all of such sums as at other times may have been in the same way unlawfully collected from the said receiver during the continuation of his management of said property as such.

Your orator avers that it is in no other wise whatever the successor to the Florida Railway and Navigation Company, and that it holds its property under and by virtue of liens created a long time in the advance of the pretended assessments under chap. 3558 of the Laws of Florida.

Further complaining, your orator says that on the 8th day of June, 1891, without any previous notice whatever to your orator, there was approved by the governor of the State of Florida an act, being chapter 4703 of the Laws of Florida, reference to which is here made as a part of this bill.

That, pretending to act under authority of said act, the comptroller of the State of Florida has directed and the sheriff of Leon county intends and has undertaken to seize and sell the property of your orator for the State and county taxes so illegally assessed for the years 1879, 1880, and 1881; all of which doings are greatly to

213 the wrong and injury of your orator as tending to injure the credit of its company and affects prejudicially the values of its property and will cast a cloud upon the title of your orator thereto, and attached hereto is a copy of the comptroller's warrant to said sheriff, marked — and made a part of this bill.

That your orator is informed and believes that the said sheriff, unless restrained by the order of the honorable court, will sell the property of your orator for the purposes as set forth, and it attaches hereto a copy of the published notice given by the sheriff of his intention to sell said property on the 7th day of November, 1892, which is marked Exhibit — and made a part of this bill.

That all of these wrongs and injuries to your orator in his right and title to his property are against equity and good conscience; and inasmuch as your orator is without relief except in a court of equity, where such things are cognizable,

To the end, therefore, that the defendants may, if they can, show cause why your orator should not have the relief hereinafter prayed, and that they and each of them may upon their corporal oath full, true, direct, and perfect answer make to all and singular the premises, and that your honor will by a decree of this honorable court decree:

1st. That all of its entire line of road from Jacksonville to Chattahoochee, and the branches to Monticello and St. Marks, and the lines of road from Fernandina to Cedar Keys and from Waldo to Plant City are covered by the exemption from taxation as provided in the internal-improvement act.

2nd. That its line of road from Jacksonville to Lake City is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of its completion.

214 3rd. That its line of road from Lake City to Quincy, with the branch from Drifton to Monticello, and the road from Tallahassee to St. Marks, are not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of their completion.

4th. That its line of road from Fernandina to Cedar Keys is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1864, the date of its completion.

5th. That your orator's line of railroad from Waldo to Ocala is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1877, the date of its completion.

6th. That your orator's line of railroad from Ocala to Plant City is not subject to taxation for State or county purposes, and will not be for the full period of thirty-five years from the date of its completion to the waters of Tampa bay.

7th. That your orator's line of railroad from Quincy to Chattahoochee is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1874, the date of its completion.

8th. That your orator's lines of road and no part of them are subject to the payment of the tax assessed against them in A. D. 1885 for the years 1879, 1880, and 1881.

That each and every the assessments made by the said William D. Barnes for taxes for State and county purposes on the lines of road

of your orator for either and each of the years of 1879, 1880, 1881, 1882, 1883, 1884, 1885, and 1886 are illegal and void.

215 May it please your honor to grant unto your orator the injunction of this court, directed to the said William D. Bloxham, as comptroller, and to John A. Pearce, as sheriff of Leon county, State of Florida, restraining them and each of them from making any levy or sale, or attempting the same, on the property of the lines of your orator's railroad on account of any of the assessments for taxes made thereon for the said years of 1879, 1880, 1881, 1882, 1883, 1884, 1885, or 1886, and from executing or attempting to execute any warrants of sale issued under said assessments or either of them, and restraining the said William D. Bloxham from hereafter making any further assessments for such purposes or for any purposes of taxation upon the lines of your orator's road which is upon the routes between Jacksonville and Chattahoochee, or the branches therefrom to Monticello or St. Marks, or on the line from Fernandina to Cedar Keys, or from Waldo to the waters of Tampa bay, until the expiration of thirty-five years from the date of the completion of the said several lines.

And that it be decreed that the said William D. Bloxham do pay to your orator all moneys which have been so improperly collected from it on the account of said assessments for taxes, and for such other and further relief as to equity may appertain.

May it please your honor to grant unto your orator the State's writ of subpœna, to be directed to the said defendants, William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, commanding them, on a day to be named, to appear before this court and make full answer under oath to all and singular the premises, and to abide the decree of the court herein.

(Signed) THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY,

216 By JOHN A. HENDERSON, *Vice-President.*

(Signed) JOHN A. HENDERSON,
Solicitor for Complainant.

STATE OF FLORIDA, }
Leon County. }

Personally came John A. Henderson, who, being duly sworn, says that he is the vice-president of the complainant company; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true as to all matters stated therein upon knowledge, and that as to all statements on information and belief therein made he believes them to be true.

(Signed) JOHN A. HENDERSON.

Sworn to and subscribed before me this Nov. 2nd, 1892.

(Signed) COUNCIL A. BRYAN,
Clk Ct. Ct. Leon Co., Fla.

217

EXHIBIT A.

Copied from the assessment-roll of the several counties named, as made for the year A. D. 1884, except as herein stated, and giving therefrom the style of the "name of tax-payer," description of property, aggregate value, and total amount of tax assessed for State and county purposes.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
Gadsden..	Florida Railway & Telegraph Navigation Company:			
	35 miles of main track, valued at $7,000 per mile.....	$245,000		
	$\frac{23}{100}$ miles of side track, valued at $3,500 per mile	1,610		
	Pro rata value of rolling stock, including engines, cars, and appurtenances.	17,603		
	20 miles telegraph lines, valued at $50.	1,000		
			$265,293	$3,183.51
218				
Leon.....	Florida Railway & Navigation Company:			
	Length of main track, 26 miles...	$182,000		
	Length of branch road, 11 miles. Including right of way and roadbed.	44,000		
	Side track, $1\frac{49}{100}$, & main track....	4,900		
	Pro rata of rolling stock, including value of locomotives, engines, passenger & freight, construction, and all other cars and appurtenances.	12,000		
	C. F. C lots 70 & 71, 72, 73, 87, 88, & 90, with the sections and other lands (300).			
	All the sec. houses and warehouses (800), &c., as therein described (300).			
	Valuation of town or city lots and improvements	12,500		
	Value of all other personal property (except animals)..	23,693		
			280,993	4,355.38
Wakulla county.	Florida Railway & Navigation Company.....		45,192	564.90
219				
Jefferson .	Florida Railway & Navigation Company:			
	18 miles main track..	$12,600		
	4 miles main track.....	16,000		
	$\frac{52}{100}$ miles side track	1,820		
	Pro rata value of rolling stock, including cars and appurtenances.	11,155		
	1 lot and depot at Mont..... .	2,000		
	1 depot at Lloyds.....	2,500		

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
	Lot at Drifton	305		
	Lot at Williamsburg	500		
	Value of all other property (except animals)			
			160,240	2,163.24
Madison	Florida Railway & Navigation Company:			
	Total value, including rights of way, road-bed, side track, and main track			
	Pro rata value of rolling stock, including engines, cars, and appurtenances, 34 miles	240,065		
	Value of all other personal property (except animals)	17,175		
			257,240	7,073.60
220				
Suwannee	R. R. F. Railway & Navigation Co.:	(?)		
	25 miles of track	175,000		
	$\frac{86}{100}$ miles side track	1,260		
	Pro rata share R. stock, engines, &c.	12,630		
	Depots Live Oak, Houston, & Welborn	2,780		
			191,670	2,300.05
Columbia	Florida Railway & Navigation Co.:			
	21 miles main track, $\frac{45}{100}$ side track, and *pro rata* rolling stock	159,219.83		
			159,219.83	2,229.08
Baker	Fla. Railway & Navigation Co.:			
	(?) (?)		181,245	2,537.46
Duval	Florida Railway & Navigation Co.:			
	Right of way, road-bed, side and main tracks	398,160		
	Personal, rolling stock, *pro rata*	27,830		
			425,990	5,963.87
221				
Nassau	Florida Railway & Navigation Company:			
	48 miles of main track, valued at 7,000 per mile	336,000		
	$2\frac{44}{100}$ miles of side track, valued at 3,500 per mile (F. & T. included)	8,540		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	24,251		
	Wharf improvements at the foot of Beach St., Fernandina, known as the steamship wharf.	3,400		

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
	Railroad shops in Fernandina, fixtures, machinery, & tools in said shop	4,299		
	Value of all other personal property (except animals)	11,300		
			387,790	4,847.37
Clay	Florida Railway & Navigation Company:			
	6 $\frac{80}{100}$ miles at 7,000	(47,600) (40,600) (?)		
	$\frac{24}{100}$ miles side track, valued at 3,500 per mile	840		
			44,370	510.27
	Pro rata rolling stock, engines, cars, &c			
Bradford	Fla. R'y & N. Co.:			
	Total length of main track in Bradford Co., 20 miles. Total value of road, including right of way, road-bed, side track, & main track	143,045		
	Pro rata value of rolling stock, including value of locomotives, engines, passenger, freight, platform, construction, and other cars and appurtenances	10,205		
			153,250	1,477.51
222				
Alachua	Railroad, Florida Railway & Navigation Co.:			
	(?) (?)			
	Miles of main track at 7,000 per mile	406,000		
	Miles of side track, 3,500 per mile.	6,797		
	Value of all other personal property (except animals)	29,310		
			442,100	7,073.60
Levy	Florida Railway & Navigation Co.:			
	39 $\frac{68}{100}$ miles main track, valued at 7,000 per mile	278,600		
	$\frac{62}{100}$ miles side track, valued at 3,500 per mile	2,205		
	Total value, including road-bed, right of way, side track, & main track	280,805		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,101.15		
	Aggregate amount	300,913.15	300,913	3,310.04

Exhibit A—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
Marion...	$40\frac{41}{100}$ main track, at 7,000	283,290		
	$1\frac{1}{100}$ side track, at 3,500.....	3,535		
	Total value, including rights of way, road-bed, side & main tracks.....	286,825.00		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,446.67		
	Aggregate amount to be assessed.....	307,271.67	307,272	4,301.81
Sumter....	Florida Railway and Navigation Company:			
	Certain lands (described, but not levied on).....			(?) (?)
	20 miles track	140,000		
	$\frac{44}{100}$ side track.....	1,610		
	Pro rata rolling stock.....	10,110		
			151,720	1,820.64

224

Copy.

B.

STATE OF FLORIDA:

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *April* 24, 1885.

State of Florida to Samuel C. Tucker, sheriff of Alachua county, Greeting:

You are hereby commanded to collect from the Florida Railway and Navigation Company, by levy and sale, in the same manner as now provided by law for the sale of property under execution from the circuit court, of the shops, fixtures, rolling stock, or any part thereof, or of the entire road or roads belonging to or owned by said company, the sum of one hundred and forty thousand and seventy-three dollars and sixty-one cents ($140,073.61), that being the amount of State and county taxes assessed against the Tropical Peninsular, Florida Transit, Florida Transit and Peninsular, Florida Central, Jacksonville, Pensacola and Mobile, Florida Central and Western, and Florida Railway and Navigation Company's railroads, all now owned or operated by the Florida Railway and Navigation Company, for the years 1879, 1880, 1881, 1882, 1883, and 1884, which are now due and unpaid, together with the *cash* (costs) and expenses of sale, and you will make due return hereof to this office.

Witness my hand and seal of office this the 24th day of April, A. D. 1885.

W. D. BARNES,
Comptroller.

225 Copy.

C.

STATE OF FLORIDA:

140,073.61
738.86

$140,812.47

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *May* 28, 1885.

Received of the Florida Railway and Navigation Company the sum of one hundred and forty thousand and seventy-three $\frac{61}{100}$ dollars, assessed against the several railroads described in the following advertisement of the properties of the same, as the State and county taxes thereon, as therein expressed, and received also the sum of seven hundred and thirty-eight $\frac{86}{100}$ dollars as the costs and expenses of such collection.

(This does not include the taxes assessed against the Fernandina and Jacksonville Railroad property for the year A. D. 1883.)

Which said payment is made by the Florida Railway and Navigation Company because of the levy and threatened sale, as indicated in said advertisement, and to avoid the sacrifice and injury which will be done to its property by such sale, and under protest that the amount so levied and assessed is not the proper amount due on said account by the said company, but is in excess thereof, and that this payment is not voluntary, but is made under duress, and that it reserves to itself the right to recover such excess of payment as shall be found to have been herein made in any manner that it shall be available whereby so to do. This payment is made for the said Florida Railway and Navigation Company by Mr. J. Aug. Johnson, attorney.

(Signed) W. D. BARNES,
[L. S.] *Comptroller.*

226 Copy.

D.

Warrant.

COMPTROLLER'S OFFICE, STATE OF FLORIDA.

To John A. Pearce, sheriff of Leon county, State of Florida, Greeting:

You are hereby commanded to collect from the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions

thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road or such part thereof as may be located in this State, belonging to or operated by said company, the sum of ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), that being the amount of State and county taxes assessed against the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, now constituting the Florida Central and Peninsular railroad, under the provisions of chapter 3558, Laws of Florida, for the years eighteen hundred and seventy-nine (1879), eighteen hundred and eighty (1880), and eighteen hundred and eighty-one
227 (1881), which said amount is now due and unpaid, together with the costs and expenses of sale as provided by law, and you will make due return thereof to this office.

Witness my hand and seal of office this 5th day of October, A. D. 1892.

[SEAL.] W. D. BLOXHAM,
Comptroller.

(*Return.*)

Came to hand this 5th day of October, 1892, & executed the within by levying on the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, the road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chattahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, this 5th day of Oct., A. D. 1892.

JOHN A. PEARCE,
Sheriff Leon Co.

Levy & ret., 1.10.

Statement Showing the Amount of Taxes Assessed under the Provisions of Chapter 3558, Laws of Florida, upon Railroads and Property Thereto Belonging which were Omitted from the Assessment-rolls of 1879, 1880, *and* 1881.

Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

Counties.	Valuation.	General revenue.	General school tax.	Total taxes for State purposes.	County revenue.	County school.	County special.	Total taxes for county purposes.
Suwannee, taxes 1879, 1880 and 1881..	$163,580	$3,108.02	$490.74	$3,598.76	$1,962.96	$1,226.85	$981.48	$4,171.29
Alachua, taxes 1879 and 1880	250,000	3,000.00	500.00	3,500.00	2,000.00	1,250.00	1,000.00	4,250.00
Baker, taxes 1879, 1880 and 1881	156,960	2,982.24	470.88	3,453.12	1,255.68	1,098.72	1,098.72	3,453.12
Bradford, taxes 1879, 1880 and 1881..	131,410	2,496.79	394.23	2,891.02	1,051.28	1,051.29	262.82	2,365.39
Clay, taxes 1879, 1880 and 1881.....	39,720	754.68	119.16	873.84	417.06	357.48	218.46	993.00
Columbia, taxes 1879 and 1880.....	137,880	1,654.56	275.76	1,930.32	1,103.04	689.40	551.52	2,343.96
Gadsden, taxes 1879 and 1880.....	228,880	2,746.56	457.76	3,204.32	1,831.04	915.52	915.52	3,662.08
Jefferson, taxes 1879 and 1880.....	130,560	1,566.72	261.12	1,827.84	783.36	261.12	2,252.16	3,296.64
Levy, taxes 1879, 1880 and 1881.....	255,390	4,852.41	766.17	5,618.58	2,043.12	2,298.52	.....	4,341.64
Leon, taxes 1879, 1880 and 1881 ...	206,200	3,917.80	618.60	4,536.40	2,474.40	1,546.50	3,402.30	7,423.20
Madison, taxes 1879, 1880 and 1881...	223,270	4,242.13	669.81	4,911.94	2,344.34	1,562.90	3,907.23	7,814.47
Nassau, taxes 1879, 1880 and 1881 ..	285,500	5,424.50	856.50	6,281.00	3,426.00	2,569.50	1,998.50	7,994.00
Wakulla, taxes 1879, 1880 and 1881...	30,120	572.28	90.36	662.64	361.44	240.96	180.72	783.12
	$2,239,470	$37,318.69	$5,971.09	$43,289.78	$21,053.72	$15,068.76	$16,769.43	$52,891.91
Savannah, Florida and Western Railroad Company.								
Hamilton, taxes 1879 and 1880.....	$56,000	$560.00	$112.00	$672.00	$336.00	$420.00	$84.00	$840.00
Suwannee, taxes 1879 and 1880.	32,000	320.00	64.00	384.00	256.00	160.00	128.00	544.00
Totals	$88,000	$880.00	$176.00	$1,056.00	$592.00	$580.00	$212.00	$1,384.00

229 *Statement Showing the Amount of Taxes Collected by the Comptroller from the Defaulting Railroad Companies, as Required by Law.*

Florida Railway and Navigation Company.

Received from said company on account of—

	State taxes.	County taxes.
Gadsden county, taxes 1881, 1882, 1883 & 1884	$4,907 31	$7,395.39
Leon county, taxes 1882, 1883 and 1884	4,174.09	9,448.04
Wakulla county, taxes 1882, 1883 & 1884	933 67	1,460.03
Jefferson county, taxes 1881, 1882, 1883 & 1884	3,858.42	8,091.50
Madison county, taxes 1882, 1883 & 1884	4,373.18	9,922.32
Suwannee county, taxes 1882, 1883 and 1884	3,046.43	5,143 53
Columbia county, taxes 1881, 1882, 1883 & 1884	3,378.18	6,459.39
Baker county, taxes 1882, 1883 and 1884	3,072.51	5,837 67
Duval county, taxes 1879, 1880, 1881, 1882, 1883 and 1884	8,463.96	13,489.91
Nassau county, taxes 1882, 1883 and 1884	6,321.82	11,662.78
Clay county, taxes 1882, 1883 and 1884	802 12	1,131 47
Bradford county, taxes 1882, 1883 and 1884	2,342.80	1,722.75
Alachua county, taxes 1881, 1882, 1883 & 1884	10,308.84	21,897.76
Levy county, taxes 1882, 1883 & 1884	4,471 04	5,980.68
Marion county, taxes 1882, 1883 & 1884	4,968 49	9,170.64
Sumter county, taxes 1883 and 1884	1,945.63	3,891.26
	$67,368.49	$122,705.12

230 *Sheriff's Sale.*

Under and by virtue of a warrant issued by Hon. W. D. Bloxham, comptroller of the State of Florida, bearing date of October 5th, 1892, to me directed as sheriff of Leon county, against the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, for State and county taxes due and unpaid for the years 1879, 1880, and 1881, for ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), together with the costs and expense, commanding me to collect by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road, or such part thereof as may be located in this State, belonging to or operated by said company, I have this day levied upon and will expose for sale to satisfy said warrant, in front of court-house door, in the city of Tallahassee, during legal hours of sale, on 1st Monday of November, being 7th day of said month, being legal-sales day, the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines of divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, to wit: The road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chat-

tahoochee, from Fernandina to Tampa, and from Waldo to
231 Cedar Keys, levied upon as the property of the Florida Central and Peninsular Railroad Company, embracing the lines or divisions thereof formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida *Central* railroad, and the Atlantic, Gulf and West India Transit railroad.

This 5th day of October, A. D. 1892.

JOHN A. PEARCE,
Sheriff Leon County.

232 Your petitioners further show that on the 2nd day of January, A. D. 1893, the said W. D. Bloxham, comptroller, and John A. Pearce, sheriff aforesaid, filed their answer to said bill, and, after exceptions sustained thereto, filed their further answer on July 29th, 1893, and that in and by their said answer admitted—

That your petitioner is a corporation organized under the laws of Florida on the 19th day of November, 1888, and acquired the lines of railroad as alleged in its said bill, and that the lines of railroad designated as "A," "B," "C," "E," "F" were constructed as alleged, and that they accepted the provisions of the internal-improvement act and were accepted by the trustees of the said internal-improvement fund as completed, and that the lines of road designated as "A," "B," "C," "E" were sold by the trustees of the internal-improvement fund for non-compliance with the provisions of the internal-improvement act, for non-payment of semi-annual interest, as alleged in said bill, and were purchased by the purchasers named therein, and that complainant by the mesne conveyances, as alleged in said bill, afterwards became the owner of the said railroads.

And by said answer said defendants further admitted that William D. Barnes made assessment on the lines of the Florida Railway and Navigation Company under chapter 3558, Laws of Florida, and that chapter 4703, Laws of Florida, was passed and approved as alleged in the said bill, and that under the authority of the last-named act and the acts to which it related they had seized and levied upon the property of petitioner, as shown by the comptroller's warrant annexed to the bill of complaint, to pay the taxes due on the same for the years 1879, 1880, and 1881 and assessed upon the
same for the said years, and that they would sell the property
233 for such purpose, as shown by the published notice annexed to said bill, unless the taxes so assessed against the said property for the years 1879, 1880, and 1881 were paid, together with the costs and expenses before such sale.

That to those portions of said bill claiming that there was no lien on the lines of road acquired by the Florida Railway and Navigation Company at such time of acquirement, and that chapter 3558, Laws of Florida, was unconstitutional and void, and that it did not provide for a uniform and equal rate of taxation and did not secure a just valuation and assessment for all classes of property, and that the State's power of taxation was exhausted over the property when

the assessment was made, as shown by Exhibit "C," and those portions of the bill denying the right of the State to levy a tax or additional tax on the values of said property of the Florida Railway and Navigation Company, as set forth in said bill, and to those portions of said bill relating to the item of $10,000,000 of bonds and the disposition of $5,000,000 thereof and the foreclosure and sale of *the properties* of the Florida Railway and Navigation Company and the purchase of the same by W. B. Cutting, as showing any reason why the taxes sought to be collected by the levy and proposed sale were not due to the State of Florida, the said defendants in and by their said answer claimed all the benefits they could have from a demurrer interposed thereto.

That said answer denied that the grant of exemption from taxation given the several lines of railroad mentioned in the bill in aid of construction was given without reference or limitation as to the proprietorship therein or any changes in such ownership, and as to so much of the bill as claimed that such exemption inured to the Florida Central and Peninsular Railroad Company by reason of its purchasing and acquiring said lines of road at foreclosure
234 sale and otherwise, as alleged in the bill, said defendants claimed all the benefits they could have had from a demurrer interposed thereto.

That even if such exemption from taxation was intended and contemplated by the legislature, it was powerless to grant the same for the reason that said exemption was not extended to all railroad companies and their property in the State of Florida; that such exemption, if granted, was gratuitous and without consideration, and the people of Florida were not precluded from revoking the same by subsequent organic law and legislation and imposing upon the said lines of railroad the same burdens of taxation imposed on other corporations and persons.

That even if the lines of road constructed and the companies organized prior to the constitution of 1868 were so exempt, as claimed in the bill, such exemption did not pass to petitioner by the several mesne conveyances mentioned in the bill, for the reason that by said acts there *was* only exempted the capital stock, railroad, and other property of said several lines, and that with the exception of the right of way and probably a portion of the road-bed and perhaps a few other insignificant items the railroad property upon which the taxes are now sought to be collected is not the same property which was the property of the said several companies to which the bill claims the exemption from taxation attached, and that petitioner has not proffered or tendered the tax upon any part of the taxed property.

That by the purchases, transfers, and consolidations mentioned in the bill petitioner acquired only the property of the said several constituent companies, and did not acquire any of said railroad's franchises, privileges, or immunities, and alleged exemption from taxation as a railroad corporation duly chartered and em-
235 powered to exercise the franchises and enjoy the immunities and privileges thereof in the State of Florida.

That said answer denies that by the sale of the said line of road

from Jacksonville to Chattahoochee and branches to Monticello and St. Marks to Edward J. Reed, and by deed of said Reed of Feb'y 28th, 1882, the Florida Central and Western Railroad Company was invested with all the rights, privileges, and immunities covered by said mortgage and of the charter and statutory benefits of the several constituent companies.

The said answer denies that by reason of the consolidation of the several constituent companies into the Florida Railway and Navigation Company there was anything in or any existing laws of such property acquired by which they or petitioner could claim or receive any immunity or exemption from taxation or from the taxes demanded by the State therein. It denies that the legislature had the constitutional right and power to exempt from taxation all of the lines of road built on the lines indicated in the 4th section of the internal-improvement act, and denies that the exemption of said lines from taxation for the period of thirty-five years became by contract of the State a part and parcel of the property value of said roads, and that this exemption became a part of the value of the property which petitioner acquired in its acquisition of each and all of its said lines, and that this was the law of the property as declared by the courts of this State when the Florida Railway and Navigation Company acquired the same, and that as to so much of the bill as claims that petitioner is exempt from the payment of the taxes sought to be collected by levy and sale, as therein mentioned, defendants claim all the benefits they could have from a demurrer interposed thereto.

That said answer denies the allegations of said bill that
236 neither the internal-improvement act nor acts amendatory thereof, wherein was granted the alleged exemption, nor the acts under which said lines of road were constructed, contained any reservation of power in the legislature to alter, amend, or repeal the said immunity of exemption from taxation, and that any and every act of the State attempting to revoke, repeal, or amend the same was violative of petitioner's rights as guaranteed by the Constitution of the United States. It avers that chapter 3558, Laws of Florida, was a valid act, and that it sufficiently specified the Florida Railway and Navigation Company, because said company was the owner of the railroad property that had escaped taxation for the years 1879, 1880, and 1881.

To that part of the bill which asks relief as to the $140,812.47 paid to the comptroller, as therein alleged, defendants aver that even if complainant is entitled to such relief it can only be granted by the legislature, and the court has no jurisdiction or power to grant the relief as to such part payment of taxes.

Said answer further denies that a lien was not contemplated in favor of the State against the Florida Railway and Navigation Company at the time it acquired the lines of road, for that by a joint resolution of the legislature of 1881 the comptroller and governor were directed to employ counsel to bring suits to collect taxes due, but never up to that time paid by certain lines of railroad, including

the lines of said last-named company, and the intention of the State to collect such taxes was thereby made manifest.

Petitioner further shows that on the 28th day of July, A. D. 1893, his honor John W. Malone, judge of the second judicial circuit of Florida, filed in said cause his certificate of his disqualification to hear and determine the same for the reason that he was personally interested in the result thereof.

237 That on the 2nd day of September, 1893, your petitioner filed its general replication in the usual form to the aforesaid answer of the defendants William D. Bloxam, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida.

That on the 13th day of November, A. D. 1893, the cause came on for hearing on motion for injunction *pendente lite* before the honorable judge of the third circuit, at Live Oak, upon bill and answer, and after argument by the counsel for the respective parties, in which there was no intimation given nor allegation made that there was involved in the controversy any dispute of the alleged and admitted changes of entire ownership of the several properties involved, but therein it was contended by the solicitor for the defendants and denied by the solicitor of the complainants that it was lawful to assess and collect the tax for the years 1879, '80, and '81, notwithstanding such entire change of ownership as alleged. It was agreed in writing that the said hearing should be final, and the decree to be entered thereon was to be a final decree.

And after due consideration the said judge, on the 25th day of November, A. D. 1893, rendered a final decree therein in the words and figures as follows:

In the Circuit Court, 2nd Judicial Circuit of Florida in and for the County of Leon. In Chancery.

THE FLORIDA CENTRAL & PENINSULAR Railroad Company *vs.* WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.	Bill for Injunction & Relief.

238 The above-entitled cause, coming on to be finally heard by the undersigned, judge of the 3rd judicial circuit (the judge of the 2nd judicial circuit being disqualified), and was heard upon bill and answer, and after argument by John A. Henderson, solicitor for the complainants, and William B. Lamar, attorney general for the State of Florida, solicitor for the defendants, and the court, being fully advised of its opinion herein, doth hereby adjudge and decree as follows, to wit:

1st. That the several lines of railroad now owned by complainant and described in the bill of complaint, to wit, "the line of railroad — Lake City to Quincy, Florida, with branches to Monticello and St. Marks, Florida; the line of railroad from Lake City to Jackson-

ville, Florida; the line of railroad from Waldo to Ocala, Florida, and the line of railroad from Ocala to Tampa, Florida," are and were in A. D. 1885 each and all subject to taxation as other property in the State of Florida, even though said lines of railroad were built on the lines indicated by the general internal-improvement act of A. D. 1855-'6, chapter 610, Laws of Florida, and under the provisions contained in said general internal-improvement act and at the time or times severally alleged in complainant's bill.

2nd. That the several lines of railroad aforesaid, with the branches aforesaid, were not exempt from taxation for the years A. D. 1884, A. D. 1883, and A. D. 1882, and that the taxes thereon demanded of the Florida Railway and Navigation Company thereon under an assessment in A. D. 1885 and paid under protest, as alleged by complainant, were lawfully exacted and collected from said company, notwithstanding portions of some of the aforesaid lines of railroad or all of the same were constructed under the provisions of the general internal-improvement act of Florida, chap. 610, Laws of Florida, and notwithstanding said lines of railroad were
239 built on the lines indicated thereby and therein.

3rd. That the said lines of railroad properties of complainant are subject to taxation for the year A. D. 1886, and that complainant's prayer that defendants be enjoined from assessing and collecting the same for the year A. D. 1886 be, and the same is hereby, denied.

4th. That the taxes now attempted to be collected on the said several lines of railroad owned by the complainant by the defendants William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, under assessment made thereon in A. D. 1885, by virtue of a statute passed in A. D. 1885, chapter 3558, Laws of Florida, on the aforesaid lines of railroad and branches, now the property of the complainant, but which were so assessed on the same for the years A. D. 1879, A. D. 1880, and A. D. 1881, and which were assessed on them as the property respectively of the Jacksonville, Pensacola and Mobile Railroad, the Florida Central & Railroad, and the Transit Peninsular Railroad Companies, were and are not liens on said several lines of railroad for the several years aforesaid for which said assessments were made, and were not and are not assessable against the Florida Railway and Navigation Company; that the said statute under which the assessments were made for the years last aforesaid was a special statute for the collection of general revenue and did not provide or attempt to provide a uniform, equal, and just assessment or collection of taxes for the years A. D. 1879, A. D. 1880, and A. D. 1881, and that so much and that such part of said statute of A. D. 1885, chap. 3558, Laws of Florida, as attempts to provide for an assessment and collection of taxes for the years A. D. 1879, 1880, and 1881 is, as to the complainant's said property, unconstitutional and void, and the State of Florida, by its legislature, having repeatedly and expressly limited its right to assess property omitted from assessment for taxes for more than three years next pre-
240 ceding the assessment thereof, the said assessments so made, as aforesaid, or attempted to be made on the said properties

of the complainants for the years A. D. 1879, A. D. 1880, and A. D. 1881, under the provisions of the act aforesaid, and the said warrant and tax levy *is* hereby adjudged and decreed to be unequal, unlawful, unconstitutional, and void.

6th. And that the said defendants, the said William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined from selling or attempting to sell the said several lines of railroad of complainants or any part or parts thereof under said assessment for the years A. D. 1879, A. D. 1880, and A. D. 1881, and from in any way or manner interfering with or attempting to collect the said taxes for said years last aforesaid.

5th. That defendants pay the cost of this cause, to be taxed by the clerk of the circuit court of Leon county, Florida.

Ordered, adjudged, and decreed at chambers, at Live Oak, in the 3rd judicial circuit of Florida, this the 25th day of November, A. D. 1893.

J. F. WHITE,
Judge of the 3rd Judicial Circuit.

Your petitioner would further show that from the said final decree rendered by the judge of the 3rd judicial circuit of Florida on the 25th day of November, A. D. 1893, both your petitioner
241 and the said defendants entered in the office of the clerk of the circuit court for Leon county their appeal to the ensuing term of the supreme court of the State of Florida then to be held at Tallahassee, in said State, commencing on the 12th day of June, A. D. 1894.

That after a hearing in the said cause and, to wit, on the 12th day of June, A. D. 1895, the said supreme court rendered its opinion and made its order and mandate to the judge of the second judicial circuit of Florida reversing portions, affirming portions of, and modifying the aforesaid decree of November 25, 1893, and commanding that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had.

Your petitioner would further show that afterwards, to wit, on the 18th day of October, A. D. 1895, and before any decree was rendered in said circuit court in conformity with the mandate and opinion of said supreme court, your petitioner, with leave of the said circuit court first had and obtained, filed its supplemental bill, in the nature of a bill of review, in the said circuit court against the defendants, W. D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, in said State, and praying that upon the grounds of newly discovered evidence and upon other facts and for various reasons therein particularly set forth that the final decree rendered in said cause be reviewed, reversed, and modified.

That to petitioner's said supplemental bill in the nature of a bill of review the said defendants interposed their demurrer, and
242 upon a hearing thereof before the judge of the 3rd judicial circuit of Florida on the 26th day of February, A. D. 1896,

the said judge made his order and decree overruling the said demurrer, and from the said order overruling the said demurrer the said defendants entered their appeal to the ensuing term of the supreme court of Florida, commencing on the 9th day of June, A. D. 1896.

That after hearing upon said appeal the said supreme court rendered its opinion, and on the 22nd day of May, A. D. 1897, sent down its mandate to said circuit court, which is in the words and figures following, to wit:

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial
243 circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree of said circuit court was rendered February 26th, A. D. 1896, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal, agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January term of said supreme court, holden at Tallahassee, A. D. 1897, the said cause came on to be heard before the said supreme court on the said transcript of the record, and was argued by the counsel, in consideration whereof it was considered by said supreme court that the said decree overruling the demurrer will be reversed and the cause remanded with further directions that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court, upon which a mandate will again issue; and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahoochee and branches. It is further ordered that the appellant- do recover of the appellee their costs by them in this behalf expended, which costs amount to the sum of fifty-seven and $\frac{50}{100}$ dollars; therefore

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said
supreme court, and the laws of the State of Florida ought to
244 be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court of Florida.

Your petitioner further shows that on the same day, to wit, on the 22nd day of May, A. D. 1897, the said supreme court made, issued, and sent to the said circuit court its further order and mandate to the said circuit court upon the appeal first herein maintained from the final decree entered by the judge of the 3rd judicial circuit on November 25th, 1893; which said mandate is in words and figures following, to wit:

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial
245 circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree and order of the said circuit court were rendered November 25th, A. D. 1893, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January term of said supreme court, holden at Tallahassee, A. D. 1895, the said cause came on to be heard before the said supreme court on the said transcript of the record and was argued by counsel; in consideration whereof it was considered by said supreme court that the said decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing an injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct a return of the taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, be, and is hereby, affirmed except that portion which holds the line of railroad of said appellee company from Ocala to Tampa subject to taxation aforesaid; the said decree be, and is hereby, reversed in so far as it makes subject to taxation for the years named that portion of the line of railroad of said appellee company from Ocala to Tampa, described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa. So much of said decree that holds that the statute under which the assessments were made and under which proceedings are being taken by the appellants to collect taxes
246 of the appellee company is a special statute for the collection of general revenue is unconstitutional and void be, and is hereby, reversed. So much of the decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the appellants from selling or attempting to sell the same, under the assessment aforesaid, or any part thereof, for the taxes of said years,

and from in any manner interfering with or attempting to collect said taxes, be, and is hereby, reversed, and the cause is remanded for further proceedings in accordance with the opinion of the court filed herein; and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of seventy-three dollars and thirty cents; therefore

You are commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, A. D. 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court, State of Florida.

Your petitioner further shows that on the 19th day of June, A. D. 1897, on motion of defendants, his honor John F. White, judge of the 3rd judicial circuit, rendered the following decree in the said cause:

247 In the Circuit Court for Leon County, in the Second Judicial Circuit of the State of Florida. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and JOHN A. PEARCE, as Sheriff of Leon County.

This cause came on to be further heard, and, in obedience to the mandate of the supreme court of the State of Florida and upon motion of counsel for the defendants, it is ordered, adjudged, and decreed as follows, viz:

1. That the decree heretofore made in this cause on the 20th day of February, A. D. 1896, overruling the demurrer to the plaintiff's supplemental bill in the nature of a bill of review, be, and the same is hereby, reversed and set aside, and that said demurrer be sustained and said bill dismissed, at plaintiff's costs.

2. That so much of the decree heretofore made in this cause on the 25th day of November, A. D. 1893, as holds the lines of railroad therein described subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refuses an injunction against the assessment and collection of taxes thereon for 1886, and refuses to direct a return of taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, except that portion which holds the line from Ocala to Tampa subject to taxation, as aforesaid, is affirmed.

3. That said decree is reversed in so far as it makes subject to taxation for the years named that portion of the line from
248 Ocala to Tampa described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa.

4. That so much of said decree as holds that the statute under which the assessment was made and under which proceedings are being

taken by the defendants to collect taxes of the complainant is a special statute for the collection of general revenue and unconstitutional and void is also reversed.

—. That so much of said decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the defendants from selling or attempting to sell the same under the assessment aforesaid or any part thereof for the taxes for the said years, or from in any manner interfering with or attempting to collect said taxes, is also reversed.

6. That the said defendants, W. D. Bloxham, the comptroller, &c., and John A. Pearce, as sheriff, &c., their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined and restrained from selling or attempting to sell that portion of the plaintiff's railroad from Jacksonville to Tampa and described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa under said assessment for the years 1879, 1880, and 1881 and the line from Ocala to Wildwood under said assessment for the years 1879 and 1880.

7. That the plaintiff pay the costs of this suit and be taxed by the clerk.

Ordered and decreed at Live Oak, Fla., at chambers, on this 19th day of June, A. D. 1897.

JOHN F. WHITE,
Judge 3rd Judicial Circuit of Florida.

249 That said decree was not filed with the clerk of the circuit court for Leon county and by him enrolled until July 5th, 1897, as appears from the file-mark and entry of said clerk thereon.

Your petitioner would further show that at the date of the rendition of the last-named decree, to wit, on the 19th day of June, A. D. 1897, the defendant William D. Bloxham was not comptroller of the State of Florida; that his term of office as such comptroller expired by limitation on the — day of January, A. D. 1897, and one William H. Reynolds was thereafter duly qualified and commissioned as comptroller of said State, and was at the date of the rendition of said decree and now is the legally qualified, commissioned, and acting comptroller of the State of Florida, and that there was a defect of parties to said suit when said last-mentioned decree was signed and when the same was enrolled.

Your petitioner further shows that all the foreclosure proceedings, judicial sales, receiverships, and transfers of the several lines of railroad and railroad property mentioned and set forth in petitioner's original bill of complaint aforesaid were had in and under the authority of the circuit court of the United States for the northern district of Florida, and all the orders, decrees, receiver's accounts, and other papers and documents relating thereto or connected therewith were filed or recorded as a part of and among the records of said court; that before the filing of petitioner's said original bill and, to wit, on the 29th day of May, A. D. 1891, the court-house or building

in Jacksonville, Florida, where said court was held and its records kept, was, together with all of said records, files, papers, and documents, lost and destroyed by fire, and your petitioner was thereby deprived of much of the valuable information and evidence
250 necessary in the preparation of its said bill, and was forced to rely largely on the memory of individuals of long past transactions and occurrences, hearsay, and some meagre printed reports of some of the cases made in appellate courts, all of which was in many instances indefinite, incomplete, and unreliable.

That your petitioner is a corporation that had no existence at the time of many of the transactions referred to and was not created till several years after the making of the assessments complained of, but was formed to own and operate the said railroad properties that had been purchased by people at a judicial sale in 1887, who were unfortunate creditors of the previous owner and who were entire strangers to the property prior to their purchase, so your petitioner was not informed of the real facts, as hereinafter stated, and was not advised of their materiality nor put upon notice of the importance in value of a statement thereof as a deraignment of title by any issue raised in the pleadings, since the narrative of title in petitioner's original bill was only in explanation of the situation at the time of assessment, which justified the allegation in the bill of an entire change of ownership for value of the entire property before the date of such assessment; to which averments issue was made by defendant's answer admitting the alleged conveyances and denying, as upon demurrer to the bill, that petitioner acquired any immunity from taxation for the years 1879, 1880, and 1881.

That the supreme court decided, in effect, that the State did not have the power to follow this property for the taxes of 1879, 1880, and 1881 by assessment in 1885 if it had ceased to be in the possession and ownership of the persons to whom it belonged during the time for which such assessment was made into the hands of innocent purchasers for value, and reached its conclusion that the
251 railroad from Jacksonville to Chattahoochee river, with branches to Monticello and St. Marks, was owned and operated by Edward J. Reed and associates from September, 1879, to February, 1882, by a wholly mistaken view of the facts not in issue in the case or submitted, and upon an interpretation of the statements of the bill that is entirely at variance with the facts as they existed and the understanding and purport of such statements at the hearing below; that while said original bill, on pages 14 and 15, does allege that Edward J. Reed and associates purchased said line of road at foreclosure sale Sept. 25th, 1879, and conveyed the same Feb'y 28th, 1882, to a company organized and known as the Florida Central and Western Railroad Company, said bill is silent in its allegations as to the possession and ownership of said line of railroad during the time intervening between Sept. 25th, 1879, and February 28th, 1882; and petitioner shows that since the said opinion was rendered, with the aid of its counsel, some old letters and portions of accounts have been found which have led to the discovery of what was the actual status of the possession and ownership of said

property during said interval, which before then was not known by your petitioner and which could not be found by it, although it exercised great diligence in the search for the actual facts to set them forth in its bill; and your petitioner now alleges as evidence discovered since the rendition of said opinion by said supreme court that in fact and in truth during all these years, covering the whole of the period for which these taxes are assessed and for the entire time between September, 1879 (and before), and until Feb'y 28th, 1882, a company known as the Jacksonville, Pensacola and Mobile Railroad Company owned that part of the aforesaid line of railroad between Lake City and Chattahoochee, with branches to St. Marks and Monticello, and it was possessed, used, and operated by receivers of United States court, viz., Sherman Conant and A. B. Hawkins, who re-
252 tained the possession of said road and received and retained the tolls and revenues thereof from September, 1879, the date of the sale alleged in the original bill, until after the said sale was confirmed by said court; that on the 10th day of February, A. D. 1882, the said H. R. Jackson, Chas. H. Symonton, and Adolph Engler, purchasers at the sale aforesaid, conveyed the said line of railroad for value to said Edward J. Reed, before which last-named date Reed and his associates were not owners of and were not possessed of said property, nor in receipt of any of its incomes, or in any way interested therein; that the portion of said road between Lake City and Jacksonville was owned and possessed and enjoyed by the Florida Central Railroad Company, its owners for many years, until the judicial sale thereof on the 6th day of January, 1882, when it was purchased by Edward J. Reed, who for the first time became possessed of the said line of railroad after the confirmation of said sale occurring thereafter within less than ten days from the date of sale aforesaid.

That said foreclosure sales and receiverships were had in and under the authority of the circuit court of United States for the northern district of Florida, and all the records and papers of said court in said causes were destroyed by fire, as hereinbefore said, before the preparation and filing of petitioner's said original bill; that Sherman Conant, one of the aforesaid receivers, had died prior to that time, and A. B. Hawkins, the other receiver, had removed from the State of Florida to the State of North Carolina; that your petitioner incurred great expense and labor in the preparation of its said original bill, occasioned by the destruction and loss of the court records aforesaid and the great time that has elapsed since the occurrence of many of the transactions therein narrated, and exercised all due and reasonable dili-
gence to ascertain, discover, and set forth every fact material
253 to its case; that the aforesaid new matter was not known to your petitioner and by the exercise of due and reasonable diligence could not be discovered and produced at the hearing upon said original bill, and your petitioner again avers that it did exercise extraordinary diligence and did avail itself of all known sources of information in its efforts to obtain and set forth in its bill the actual facts of each and every the events, incidents, changes,

sales, and all other proceedings material to the full advisement of the court in and about the fair determination of the questions involved in said controversy, and that it omitted nothing therefrom that was available to it in the exercise of such diligence.

And your petitioner most respectfully submits and suggests that while there was no change in the (legal) ownership and possession of the several lines of railroad acquired by the Florida Railway and Navigation Company from the time of its organization till the assessments were made, still it is charged in petitioner's bill and admitted by defendant's answer that after said property was acquired by the Florida Railway and Navigation Company, and before it was assessed for taxes for the years A. D. 1879, 1880, and 1881, and, to wit, on July 1st, 1884, and before the passage of chapter 3558, Laws of Florida, under which such assessment was made, that said company issued its bonds (*such assessment was made that said company issued its bonds*) to the amount of $10,000,000, and that $5,000,000 of said bonds were actually disposed of to holders for value, secured by mortgage or deed of trust upon all the said lines of railroad property, and also that at the time of the formation and consolidation of the original and constituent railroad companies mentioned in said bill into the said Florida Railway and Navigation Company each and every of said several constituent companies had outstanding and unpaid large amounts of bonds by them severally
254 theretofore issued, and secured by mortgage or deeds of trust upon said several lines of railroad respectively; that upon the failure of the said Florida Railway and Navigation Company to pay a certain common-law judgment rendered against it in favor of W. B. Cutting for moneys borrowed and for defaults in the payment of the interest on the underlying bonds aforesaid of the said several constituent companies, the lines of railroad of said Florida Railway and Navigation Company were upon bills filed by said Cutting and by the several trust companies representing the holders of said bonds in the circuit court of the United States for the northern district of Florida for the foreclosure of said liens, sold under the decree and authority of said court in the year A. D. 1889, severally under their first liens and as a whole under the lien of the mortgage created (*created*) by the Florida Railway and Navigation Company, as aforesaid, and that W. B. Cutting, as agent, bought the said property and conveyed to your petitioner's company, which he and his associates had organized for that purpose, and that petitioner is no otherwise whatever the successor of said Florida Railway and Navigation Company, and it holds its property by virtue of liens created long prior to the assessment made under chapter 3558, Laws of Florida.

And your petitioner respectfully submits that under undisputed facts your petitioner occupies the legal position and attitude of a *bona fide* purchaser for value of the whole of said property at the date of the execution of said several mortgages or deeds of trust, and that at said several dates the State had made no assessments and had taken no steps whatever to collect the said taxes; that no taxing statute had affixed any lien upon said property, and that at the date when said consolidated bond issue was

made under which the system as a whole was sold, the time for the assessment and collection of taxes for the years 1879, 1880, and
255 1881 had passed, and that chapter 3558, under which the assessment was subsequently made, was not enacted until February 12th, 1885, and, having acquired its said property by purchase at the judicial sales aforesaid, your petitioner respectfully submits that it stands in the attitude of a *bona fide* purchaser of said property for value as of the dates of the said several liens securing the bond issues aforesaid, and should have been so adjudged by the court and decreed to hold the same exempt from the payment of the taxes so assessed for the years 1879, 1880, and 1881, and your petitioner suggests and assigns the failure of the court so to decree as error in law, apparent upon the face of said decree, for which the same should be reviewed and reversed. Your petitioner further shows that the decree rendered by the judge of the 3rd judicial circuit on June 19th, 1897, as a final decree is informal and imperfect and within itself unintelligible, as it can only be read in connection with and by reference to the decree of Nov. 25th, 1893; that it was rendered for and against W. D. Bloxham, as comptroller, who was not at that time the comptroller of the State of Florida, and there were no proper parties to said cause at the date of the rendition of said decree.

Wherefore your petitioner prays that leave be granted it to file a bill of review to review the aforesaid final decree rendered, as herein aforesaid, upon the grounds of the newly discovered evidence aforesaid and the error in law appearing upon the face of the said decree aforesaid, and that petitioner be permitted by way of supplement to make William H. Reynolds, as comptroller of the State of Florida, a party defendant thereto in lieu of the original defendant, W. D. Bloxham, who has ceased to be such comptroller, and for such other and further relief in the premises as the nature of the circumstances of this case may require.

[SEAL.] THE FLORIDA CENTRAL AND PENINSULAR RAILROAD CO.,
256 By H. R. DUVAL, *President*.

Attest: E. R. HOADLEY, *Secretary*.

JOHN A. HENDERSON,
J. S. WHITE,
T. L. CLARKE,
Solicitors for Petitioner, The Florida Central & Peninsular Railroad Company.

STATE, COUNTY, AND CITY OF NEW YORK:

Before me, John D. Miller, Jr., commissioner of deeds for the State of Florida in and for the State of New York, personally appeared H. Reiman Duval, to me well known, who, being duly sworn, says that he is president of the Florida Central and Peninsular Railroad Company and has continuously been the president of said company since the date of its organization; that he has carefully read

the foregoing petition, and that all the facts therein set forth as of petitioner's own knowledge are true, and those stated upon information derived from others he believes to be true; that the new matter set up in the said petition as a basis for filing a bill of review was not known to petitioner at the date of the hearing upon the original bill therein mentioned, and by the use of reasonable dili-
257 gence could not have been known or produced at said hearing, and the same has first come to the knowledge of petitioner since the said hearing, and that all the statements herein made as to the time, manner, and circumstances of the discovery of said new matter and the difficulty attendant upon such discovery are true as stated in the said petition; that the said petition is not filed for the purpose of vexation or delay, and affiant verily believes that the ends of justice and fair dealing require the granting of the prayer of the said petition.

[SEAL.] H. REIMAN DUVAL, *President.*

Sworn to and subscribed before me this 7th day of September, A. D. 1897.

JOHN D. MILLER, JR.,
Commissioner of Deeds for the State of Florida.

On the 13th day of Sept., A. D. 1897, the court made the following order granting complainant leave to file its bill of review in the words and figures following, to wit:

In Circuit Court, 2nd Judicial Circuit, Florida, for Leon County.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, Comptroller, and JOHN A. PEARCE, Sheriff of Leon County, Florida.

258 This cause came on to be heard on this 13th day of September, A. D. 1897, upon the petition of complainant for leave to file a bill of review in said cause and for an order to substitute William H. Reynolds, comptroller, in the place of William D. Bloxham, late comptroller, notice of said application having been given and herein filed after argument by the counsel.

It is ordered, adjudged, and decreed that William H. Reynolds, comptroller, be, and is hereby, made party defendant in place of William D. Bloxham, late comptroller and defendant herein.

And it is further ordered, adjudged, and decreed that the complainant be, and is hereby, allowed to file its bill of review in this cause as prayed for in its said petition.

Done and ordered at chambers, at Live Oak, Florida, as of the day first above written by John F. White, judge of the 3rd judicial circuit court of Florida, in the place of John W. Malone, judge of the 2nd judicial circuit court of Florida, who is disqualified from sitting in this cause.

JOHN F. WHITE,
Judge of the 3rd Judicial Circuit of Florida.

Endorsed: 730. (Copy.) Second judicial circuit of Florida. In circuit court of Leon county. The Florida Central & Peninsular Railroad Company *vs.* William D. Bloxham, as comptroller, and John A. Pearce, as sheriff. Order granting leave to file bill of review. Filed September 18th, 1897. C. A. Bryan, clerk circuit court.

259 On the — day of ——, A. D. —, the complainant filed its bill of review in the words and figures following, to wit:

In the Circuit Court of the Second Judicial Circuit of Florida in and for the County of Leon. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

To the honorable the judge of said court:

The Florida Central and Peninsular Railroad Company, the complainant, by its solicitor, brings this its bill of review by leave of the court, first had and obtained, against William H. Reynolds, as the comptroller of the State of Florida, and against John A. Pearce, as sheriff of Leon county, Florida, defendants; and thereupon, humbly complaining, shows unto your honor:

That heretofore, to wit, on the 2nd day of November, A. D. 1892, your orator filed its bill of complaint in the honorable court against William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, in the words and figures following, to wit:

260 In the Circuit Court of the 2nd Judicial Circuit of Florida, in Chancery, in and for the County of Leon Thereof.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida.

To the honorable the judge of said court:

The Florida Central and Peninsular Railroad Company, the complainant, by its solicitor, brings this its bill of complaint against William D. Bloxham, as the comptroller of public accounts of the State of Florida, and against John A. Pearce, as sheriff of Leon county, Florida, defendants; and thereupon, humbly complaining, shows unto your honor:

That the complainant is a corporation duly organized under the laws of Florida, under letters patent of date 17th November, 1888, and owns a line of railroad in said State which is composed of the several lines of road organized and constructed under authority of the laws of Florida, as hereinafter set forth.

A.

Of a line of railroad from Jacksonville to Lake City, in the State of Florida, which was built by a company known as the Florida, Atlantic and Gulf Central Railroad Company, duly chartered and organized under the Laws of the State of Florida, chapter 481
261 thereof, and the several acts amendatory thereof.

B.

Of a line from Lake City to Quincy, in the said State, with a branch from Drifton to Monticello, both in the county of Jefferson thereof, which was built by a company known as the Pensacola and Georgia Railroad Company, duly chartered and organized under chapter 484, Laws of Florida, and the several acts amendatory thereof.

C.

Of a line of road from Tallahassee to St. Marks, in said State, which was built by a company known as the Tallahassee Railroad Company, and chartered by and organized under the Laws of Florida, chapter —, and the acts amendatory thereof.

D.

Of a line of road from Quincy to Chattahoochee, in said State, which was built by a company known as the Jacksonville, Pensacola and Mobile Railroad Company, chartered by and organized under the Laws of the State of Florida, chapter 1716 of said Laws, and the acts amendatory thereof.

E.

Of a line of road from Fernandina to Cedar Keys, in said State, built by a company known as the Florida Railroad Company, which was chartered by and organized under chapters 482 and 729 of the Laws of Florida and the several acts amendatory thereof.

F.

Of a line of road from Waldo to Ocala, in said State, which was built by a company known as the Peninsular Railroad Com-
262 pany, chartered by and organized under chapter 729 and its amendatory acts aforesaid.

G.

Of a line of road from Ocala to Wildwood, in said State, which was built by a company known as the Tropical Florida Railroad Company, under the authority of chapter 729 aforesaid.

H.

Of a line of road from Wildwood to Tavares, which was built by a company known as the Leesburg and Indian River Railroad Company, organized under the General Laws of Florida, chapter 1987, and the acts amendatory thereof.

J.

Of a line of road from Jacksonville to Hart's Road, which was built by a company known as the Fernandina and Jacksonville Railroad Company, also organized under chapter 1987 of the general law on the subject of railroads and canals, and its amendatory acts.

K.

Of a line from Wildwood to Plant City, built by the Florida Railway & Navigation Company on its route to the waters of Tampa bay.

L.

Of a line from Tavares to Orlando, built by a company known as the Tavares, Orlando and Atlantic Railroad Company.

M.

And of a line of railroad from Plant City to Tampa, in completion of its line to the waters of Tampa bay, and built by complainant.

263 That the several roads as above indicated were constructed and in operation about as follows:

A, B, C,	as above designated,	for years prior to 1865.	
D,	"	"	in 1869–'71.
E,	"	"	for years prior to 1865.
F,	"	"	in 1877.
G,	"	"	" 1881.
H,	"	"	" 1883.
J,	"	"	" 1883.
K,	"	"	" 1887.
L,	"	"	" 1887.
M,	"	"	" 1891.

That the several acts under authority of which these several lines of railroad were constructed are hereby adopted by this complainant as parts of its said bill, with the usual reference to their several provisions as though fully set out herein.

That in the year A. D. 1855, which was prior to the construction of any of the aforesaid lines of railroad, the legislature of the State of Florida, under the authority of the constitution of said State, passed a law commonly and hereafter called the internal-improvement act of Florida and numbered as chapter 610, Laws of Florida, approved Jan'y 6th, 1855.

That the constitution of the State of Florida in force at the time of the passage of said act, chapter 610 aforesaid, authorized and directed the legislature to provide for and encourage a liberal system of internal improvements.

That the act aforesaid, chapter 610, created a public fund, called the internal-improvement fund of Florida, and vested the
264 same in certain trustees, and invested the fund with a large and very valuable quantity of lands, and declared the construction of certain railroads and canals within the State of Florida

as works of public improvement which should be aided by the State out of said fund.

That at the date aforesaid the State of Florida, with its area of 50,000 square miles, had an aggregate population of less than two to the square mile, two-fifths of whom were slaves; that she had not one mile of railroad propelled by steam, and only one tramway of 22 miles pulled by mules; that her population was as poor as it was sparse, and her people with their own available resources were totally unable to perfect any works of improvement in the way of encouraging settlement and facilitating the development of its resources and the utilizing of its commercial advantages; that the approbation of the people was given to the grant of all constitutional aid to the works of internal improvement so, as aforesaid, declared as proper to be aided by the provisions of said act.

The lines of railroad hereinbefore described as A, B, C, D, E, F, G, K, and M were those constructed and authorized so to be by this act and their respective charters, in compliance with the fourth section of said act, and were parts and parcels of those lines therein declared to be proper improvements to be aided from the State fund in the manner indicated in said acts.

That of the several railroad companies as hereinbefore referred to there had been chartered previous to the date of this act only the Florida, Atlantic & Gulf Central Railroad Company, the Tallahassee Railroad Company, the Pensacola & Georgia Railroad Company, and the Florida Railroad Company, but each of these companies chartered by the legislature and any that might thereafter
265 be chartered, any portion of whose routes might be within the lines or routes so declared to be proper improvements for aid, as aforesaid, should have the rights and privileges of constructing that part of the said lines embraced in their charters, and all the portions of the lines of complainant, which include all of its said line of road except so much thereof as is built between Wildwood and Orlando and between Jacksonville and Hart's Crossroads, were authorized to be built within the said lines or routes entitled to receive the aid given by said act and its amendments.

Your orator would show that by reference to said internal-improvement act and the said act incorporating the said railroads it will appear that the State of Florida did not reserve any right to alter or amend or repeal said acts, nor was there any law then in force prior to their enactment which authorized such repeal, alteration, or amendment, nor was there any law applicable to the said railroads inconsistent with the provisions of said internal-improvement act and said acts of incorporation, with regard to the tax on railroad property and the exemptions thereon, and it was the intent of the legislature at that time, and the people of the State and said legislature have shown the said intention ever since (as by reference to the various laws touching the subject of exemption of railroad property from taxation will appear), that the exemption contained in said internal-improvement act and said acts of incorporation should be continued in full force and effect during the term prescribed in

said acts, and particularly should so continue in favor of the road from Fernandina to Cedar Keys, with branch to Tampa.

That the act, chapter 3558, Laws of Florida, authorizing the assessment of taxes on certain railroad property — to pay the same for the years 1879, 1880, and 1881 did not specify the property of the
266 Florida Railway and Navigation Company and its constituents as liable to taxation, and the same was in fact exempted at the time of the passage of said act, and the State officers had no authority to levy upon said property for such taxes.

Your orator would further show that although the State constitution of 1868 enacted that no railroad property thereafter should be exempted from taxation, yet that said State constitution was inconsistent with the Constitution of the United States, in that it sought to deprive the companies then owning the property now belonging to the complainant of vested contract rights to such exemption, and that said State constitution abrogated the contract at that time in force between the State and the said railroad companies and illegally impaired the obligations imposed thereby upon the State of Florida, and is therefore null and void.

That among the grants given to said lines of road by said acts, and so given in aid of the construction of said lines of road, and without reference or limitation as to the proprietorships therein or to any changes in such ownership, were:

The exemption of the capital stock of any railroad company accepting the provisions of said act forever from taxation; and

The exemption of the roads, their fixtures and *fixtures and* appurtenances, including their shops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers or for the repair and maintenance of the roads, from taxation while the roads are under construction and for the period of thirty-five years from their completion.

The line of railroad, herein designated as "A," between Jacksonville and Lake City was built by its company, the Florida, Atlantic
267 and Gulf Central Railroad Company, which accepted the provisions of said act, according to the provisions of the act, and was accepted by the trustees of said internal-improvement fund as a completed (line) on the — day of ——, A. D. 1863.

The Pensacola & Georgia Railroad Company likewise accepted the provisions of said act for its entire line to Pensacola and built the line of railroad, designated as "B," between Lake City and Quincy, with branch to Monticello, and acquired the line of the Tallahassee railroad between Tallahassee and St. Marks, "C," which was also built in accordance with the terms and requirements of said internal-improvement act, and they were accepted as a completed road by the trustees of the internal-improvement fund on the — day of ——, A. D. 1866.

The Florida Railroad Company also accepted the provisions of the internal-improvement act and built according to its terms the line of road between Fernandina and Cedar Keys, hereing designated as "E," which was accepted by the trustees and was a completed road according to the provisions of said act on the — day of

——, A. D. 1864. The Florida Railroad Company likewise accepted the provisions of said act, chapter 610, for so much of the line of complainant's road as lies between Waldo and Tampa bay, which was constructed when and in the manner as hereinafter stated.

For non-compliance with the requirements of the internal-improvement act, as aforesaid, in the payment of semi-annual interest due upon completed roads to the sinking fund of the said internal-improvement fund, the following roads were seized and sold by the trustees of the internal-improvement fund under the provisions of said act, and were bought and afterwards owned and operated, as follows—that is to say: For such defaults—

268 A. The Florida, Atlantic & Gulf Central railroad and all of its property of every kind was seized by the trustees of the internal-improvement fund and legally sold on the fourth day of March, A. D. 1863, to William E. Jackson and his associates, who, under the provisions of the internal-improvement act aforesaid, chapter 610, and of an act approved July 29th, 1888, being chapter 1646, Laws of Florida, were vested with the powers and franchises granted to the Florida, Atlantic & Gulf — Railroad Company, and were made and thus became a body politic and incorporate under the name of the Florida Central Railroad Company, and as such and until as hereinafter stated the said Florida Central Railroad Company owned and operated the lines of this complainant's road, "A," from Jacksonville to Lake City, as aforesaid.

B. The Pensacola & Georgia railroad, which included the road to St. Marks and all its property, for like default was in like manner seized and legally sold on the second day of March, A. D. 1869, to F. Dibble and associates; and subsequently, under the provisions of said internal-improvement act and the provisions of an act entitled "An act to perfect the public works of this State," being chapter 1716 of the Laws of Florida, and the acts amendatory thereof, the said associates or their assigns were made a body corporate and entered as owners into the possession of the line of complainant's railroad from Lake City to Quincy and from Drifton to Monticello and the road from Tallahassee to St. Marks, and owned and operated the same under the name of the Jacksonville, Pensacola & Mobile Railroad Company until as hereinafter set forth.

E. The Florida railroad, with all its property of every kind, which is so much of the complainant's line of road as lies between Fernandina and Cedar Keys, was for like default in like manner seized and sold on the first day of November, A. D. 1866, to Isaac

269 K. Roberts and his associates, who, under the provisions of the said internal-improvement act, chapter 610, laws as aforesaid, and of chapter 482, Laws of Florida, and its amendatory acts, became the owners of said line of road, and thence after until as hereinafter stated operated the said line of road as a body corporate under the name of the Florida Railroad Company.

That between the years A. D. 1871 and 1873 the Jacksonville, Pensacola & Mobile Railroad Company built and completed and thence after until as hereinafter stated operated the portion of complainant's line of road herein designated as "D" and being that

part thereof which is between Quincy and Chattahoochee and which is upon the line or route declared by act, chapter 610, to be proper to be aided by the provisions of said act.

That under and by virtue of the provisions of the charter of the Florida Railroad Company, chapter 729, Laws of Florida, the president and directors of the said Florida Railroad Company on the 22nd day of April, A. D. 1876, set off the construction of that portion of their line of this complainant which is between Waldo and Ocala to persons desirous of constructing the same, and such persons, under the authority therein given to have a distinct organization, associated themselves together as a body corporate under the name of the Peninsular Railroad Company, which built and thence after and until as stated herein operated the portion marked "F" of complainant's line of railroad between Waldo and Ocala, and which was completed on the first day of January, A. D. 1879.

That by the same authority the proper officers of the Florida Railroad Company, on the 22nd day of January, A. D. 1881, set off
270 to persons desiring to construct the same the right of constructing so much of its said line of road as was between Ocala and the waters of Tampa bay, and such persons, under the authority therein given to have a separate organization, associated themselves together as a body corporate under the name of the Tropical Florida Railroad Company, and built that portion of said line and of this complainant's line which lies between Ocala and Wildwood, and is marked "G," in the years A. D. 1881 and 1882.

That under the terms of the statutory mortgage created by chapter 1716, Laws of Florida, and all that portion of complainant's line between Jacksonville and Chattahoochee, and including the branch to Monticello and the St. Marks road, was, on the twenty-fifth day of September, A. D. 1879, sold under decree of foreclosure to Edward J. Reed, who, together with his associates, organized a company under the general laws of the State of Florida, known as the Florida Central & Western Railroad Company, which latter company was by deed of the said Reed dated 28th February, 1882, invested with all the rights, privileges, and immunities covered by said mortgage and of the charters and statutory benefits of the several constituent companies, but without becoming in any way obliged to pay any of the debts or obligations of any such companies.

On the 30th day of March, 1880, the Fernandina & Jacksonville railroad, being that portion of complainant's line which is between Jacksonville and Hart's Cross-roads, and herein marked as "J," was built by a company having the — F. J., the company organized under the general law, chapter 1987, of the State of Florida.

On the 18th day of January, A. D. 1872, the name of the
271 Florida Railroad Company was changed to the Atlantic, Gulf & West India Transit Company by chapter 1918, Laws of Florida.

Under a decree of the circuit court of the United States for the northern district of Florida, in a suit between Doggett, receiver, and the Atlantic, Gulf & West India Transit railroad, for the

enforcement of the payment, to the use of the trustees of the said internal-improvement fund, of a sinking fund for the redemption of certain of the bonds of the Florida Railroad Company which were issued under the provisions of the said act, chapter 610, and which had not been returned by the sale of said line of road in 1868, as aforesaid, but were still outstanding, so much of your orator's road as then belonged to said company, being that portion which lies between Fernandina and Cedar Keys, with all of its property and franchises, was sold by J. B. C. Drew, master, to Edward N. Dickerson and C. D. Willard, trustees, and thereupon these trustees, for themselves and their associates, formed the Atlantic, Gulf and West India Transit Company under the said act of 1853, chapter 482 and chapters 610 and 792, and the act of January 25th, 1869, respectively. This company's name was changed in 1881 to the Florida Transit Railroad Company.

On the 22nd day of December, A. D. 1882, the following companies were consolidated into one company, according to the laws of Florida, viz: The Atlantic, Gulf & West India Transit Company, the Peninsular Railroad Company, the Tropical Florida Railroad Company. The company thus formed was called the Florida Transit & Peninsular Railroad Company.

On the 29th day of February, A. D. 1884, the Florida Transit & Peninsular Railroad Company, the Florida Central & Western Railroad Company, the Fernandina & Jacksonville Railroad
272 Company, and the Leesburg & Indian River Railroad Company were consolidated into one company. The company so formed was called the Florida Railway & Navigation Company.

The Florida Railway & Navigation Company built its line of railroad from Wildwood to Plant City and completed the line begun by the Leesburg and Indian River Railroad Company to Tavares.

The several companies thus consolidated had bonded indebtedness incurred by construction and operation, as aforesaid, and severally secured by deed of trust on their respective lines, which were outstanding, as follows:

The Florida Transit Railroad Company on May 10th, 1881, issued 1,000,000 of 6% bonds, due March 1st, A. D. 1911. The Peninsular Railroad Company on Aug. 11th, 1878, issued $350,000 of 7% bonds, due on Aug. 1st, 1900. The Fernandina and Jacksonville Railroad Company on Aug. 11th, 1880, issued $300,000 of 7% bonds, due March 1st, A. D. 1900. The Florida Central & Western Railroad Company on 9th March, 1882, issued $2,808,000 of 6% bonds, due March 1st, 1922, for defaults in the payment of the interest on which bonds it was provided in each case that the entire indebtedness should, at the election of the trustees of the respective bondholders, become due and payable, principal and interest. To secure the consolidations of the several companies, as herein stated, into the Florida Central & Western Railroad Company and of other companies into the Florida Transit & Peninsular Railroad Company, mutual concessions were necessary, and your orator avers that each of said changes and consolidations were made by radical changes in the holdings of the capital stock of said company, and that with

each and every of such changes and consolidations parties not before interested in the one and the other of said constituent companies thus became *bona fide* holders of legal estates in such companies from the respective dates of said consolidations
273 and changes, and entitled to the protection of the existing laws to their property from and after the respective dates of such several acquisitions, and in like manner it is true that the consolidations of the aforesaid several companies into the Florida Railway and Navigation Company was accomplished with like changes of interest and with the acquirement of new interests by the several holders of the capital stock of said last company, and holders thereof from the date of such consolidation became *bona fide* holders of proprietary interests in each of said constituent properties, and which interests were then acquired subject to the laws of such property as they then existed and entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property; that such changes of holdings were equal to more than one-half in value of each and every of said properties.

Your orator avers that the effect of the legislation hereinbefore set forth was an exemption of all its lines of road which were built on the lines indicated in the 4th section of the internal-improvement act from taxation while under construction, and for a period of thirty-five years from the date of the completion of the several integral parts, as herein set forth, none of which limitations of time have expired; that the exemption as aforesaid was an immunity given as a consideration for the construction of the said several lines of railroad and was in the nature of an additional value to said roads over and above their values as determined by the volume of business to be done by them or the earnings their owners received from such sources, and your orator avers that such immunity was an inducement, and a controlling inducement, to the investment of the moneys which were necessary to be expended in the construction of each and every the parts aforesaid of said
274 separate lines of road on the routes indicated in the said internal improvement act.

By reason of which premises your orator avers that the exemption of said lines of railroad from taxation for the several periods of time, as alleged, became, by contract of the State for the consideration aforesaid, a part and parcel of the property value of said roads and was not intended to be and never was in fact a personal privilege or gratuity to the corporations respectively that built said lines of road or either or any of them; that the primary purpose of this legislation was the construction of the works belonging to the system devised by the said internal-improvement act, chapter 610, Laws of Florida, and not the extension of aid or bounty to the corporations that had or might acquire the right to construct the works designated therein, and this exemption became a part of the value of the property of the railroad which your orator acquired in its acquisition of each and all of its said lines of the routes included in said system; that this was the law of the prop-

erty as declared by the courts of the State of Florida when the Florida Railway and Navigation Company acquired the same.

Your orator charges that neither the said internal-improvement act, chap. 610, nor either of the acts amendatory thereof wherein was granted the exemption from taxation on the properties of your orator, nor either of the acts under which said several lines of road were constructed, contained any provision for or any reservation of power in the legislature of Florida to alter, amend, or repeal the said immunity of exemption from taxation as herein set forth. Wherefore it says that any and every act of the State of Florida, either through amendment of its constitution or by act or resolution of its legislature in so far as it was thereby attempted to re-
275 voke, repeal, or annul the said exemption from taxation, was in violation of the rights of your orator as guaranteed by the Constitution of the United States, which does not permit vested rights under previous contracts to be impaired by subsequent enactments.

That the act or resolution under which the said Barnes claimed to assess back taxes for the years 1879, 1880, and 1881 upon the Florida Railway and Navigation Company was not a law of the State of Florida, and, if a law, does not specify that company and was not applicable to it, and the act of such assessment, being in violation of your orator's previously conceded and enjoyed exemption, is null and void.

That this exemption from taxation was accorded the several portions of your orator's line until the year A. D. 1885, when William D. Barnes, in his capacity of then comptroller of public accounts for the State of Florida, made an assessment of taxes upon the several companies then controlling the several parts of this line for State and county purposes. A copy of this assessment is hereto attached and marked Exhibit A and made a part of this bill for all purposes of reference.

That this assessment was null and void, as appears on the face of it, for, among others, the following several reasons:

The Florida Railway and Navigation Company did not exist, had not been created, and could not and did not own the property assessed or any property in the State of Florida or elsewhere during the years 1881, 1882, or 1883, or either of them, nor in 1884, except as herein stated.

The assessment was made in Gadsden county against the Florida Railway, Navigation and Telegraph Company; that in other counties there was no assessment of values as in Baker and
276 Wakulla counties; that there *was* apparent misnomers and failures definitely to assess properly *pro ratas* of rolling stock, as in the assessment of Alachua county, although the assessment that was made therefor was upon an aggregate in excess of the valuation of the entire property.

The assessment made for Clay county exhibited an error of $7,000 in the aggregate of valuation; that the assessment was confused and misleading in stating and scheduling rolling stock as realty, as in Levy, Gadsden, Suwannee, and other counties, and as personal

property, as in the counties of Duval, Baker, Bradford, Leon, and other counties.

That the assessment was not upon a uniform basis of value for the same kinds of property, as in the instance of the assessment of certain lines of telegraph of your orator at $50, when, for the same years, the telegraph lines of the Western Union Telegraph Co., whose lines were as good or better than those of your orator, were only assessed at $10 per mile.

The line of railroad then belonging to the said Florida Railway and Navigation Company was on the 30th day of May, A. D. 1885, advertised for sale by the sheriff of Alachua county by virtue of a warrant issued by the said William D. Barnes, as comptroller as aforesaid, and the said sheriff and the said comptroller threatened to sell the said property of said company for the taxes so assessed against it for the years 1881, 1882, 1883, and 1884; that not only was it the intention of said officers to make a sale of said railroad on said account, but your orator charges that they then and on that day distinctly stated to its officers and agents that it was the intention of the executive of the State to forcibly put the purchaser of said road at such sale into the possession of said road; whereupon, under the duress of the great wrong and injury that was then unlawfully
277 threatened to said property and because the said Florida Railway and Navigation Company was powerless to protect itself from the wrong in the premises, the said company paid to the defendant, the State comptroller, as aforesaid, under protest that it was arbitrarily, illegally, and forcibly extorted from it, the amount of the taxes which had been assessed, as aforesaid, against its constituent properties, amounting to the sum of $140,812.47, and your orator attaches hereto as Exhibit "B" a copy of the receipt for the same and the protest of said company against the payment, as aforesaid, signed by William D. Barnes, comptroller, as aforesaid, and which it makes a part of this its bill.

That on the eighteenth day of October, A. D. 1885, the said William D. Barnes made an assessment on the lines of the Florida Railway and Navigation Company under the authority of an act of the legislature of the State of Florida, being chapter 3558 of the same, approved on the 12th day of February, A. D. 1885, for taxes on said lines of road of the State of Florida and the several counties, as indicated in a copy of said assessment, which is hereto attached and marked Exhibit "C" and which is made a part of this bill, for the years 1879, 1880, and 1881.

And your orator charges that said assessment is illegal and unjust and without any true warrant of law; that the pretended act authorizing the same is unconstitutional and in violation of the contract and other rights of the Florida Railway and Navigation Company, and of its stockholders and of its bondholders and each and every of them, and of your orator succeeding to the rights of such bondholders, as hereinafter stated, and is likewise wrongful, injurious, unjust, and oppressive to your orator, and it specifies among other reasons that the same is so—

278 That when the Florida Railway and Navigation Company acquired its said line of road there was no lien in existence of such an assessed tax, and no notice of or even intimation of an intention to claim for the State of Florida a right to make such assessment; that by the law which was in force when it acquired the line of its road, which includes the portion of its line covered by this assessment, there was no assessment thereon for the years 1879 or 1880, and an assessment thereon for 1881, which had been paid, as aforesaid; that the law so in force then expressly prohibited the taxing power from taxing said company's road, or any other property in the State, even in case the same had been improperly omitted from the taxing rolls, and had thus improperly escaped taxation for more than three previous years from the time of making an assessment.

Your orator further avers that there were properties of large values, to wit, lands in the counties of Madison, Suwannee, Alachua, and Columbia, and in other counties of this State, and lands elsewhere in the State, which were improperly omitted from assessment for taxes during the years A. D. 1879, 1880, and 1881, and each of them, and that the act aforesaid, to wit, chapter 3558, Laws of Florida, was unconstitutional and void in that the said chapter 3558 did not provide for a uniform and equal rate of taxation; and, further, that it did not attempt to secure a just valuation and assessment for all classes of property, but was enacted to reach only property of the class with that of your orator, and there was no law at the time of its passage for reaching the other classes of property, as alleged in this bill, which were omitted from assessment, and which thereby escaped taxation for said years, nor has any law been since enacted to correct the inequalities in assessments and to remedy the wrong done to your orator's property.

279 Your orator alleges that at the time the Florida Railway and Navigation Company was organized as a corporation and acquired its line of road, as aforesaid, it found the properties, which were then in existence and which are now of your orator's lines of road assessed for the year A. D. 1880, as in Exhibit "C," hereto attached, will more fully appear, and your orator insists that it was an exhaustion of the State's and the tax-making power over the property when the assessment was made, and the time provided by law for correcting errors therein had expired, which time has long since elapsed in so far as the same could be made a lien on the property itself, and your orator avers that the right to levy any additional tax on the values of said property, if it exists at all, exists only as against the owners at the time of the property, and that the same is not now a lien on the property of your orator, and that any law of subsequent enactment which attempts to create a lien on this property in the hands of purchasers for value is void.

Your orator further shows unto your honor that on the 1st day of July, A. D. 1884, the Florida Railway and Navigation Company made an issue of $10,000,000 of first-mortgage coupon bonds and made its certain deed of trust to all of its property, including the several lines of railroad as designated herein, to secure the payment

of said bonds, principal and interest, and that by the terms of said bonds and mortgage it was provided that on default in payment of interest of said bonded indebtedness the whole principal and interest of said bonds should become immediately due and payable; that it disposed of, for value and to *bona fide* holders, more than $5,000,000 of said bonds; all of which was done and accomplished prior to the date of the assessment as last herein complained of by the said William D. Barnes.

280 That one of the purposes of said bond issue was to retire underlying bonds of the several constituent companies forming the F. R. & N. Co., as hereinbefore stated, but that the purpose so to do had been entirely futile, and such underlying bonds were not redeemed.

That on the 28th day of October, 1885, for the failure upon the part of the said Florida Railway and Navigation Company to pay to W. Bayard Cutting the amount of money hereinbefore stated to have been paid to W. D. Barnes, comptroller of the State of Florida, on account of the taxes as paid and which sum was borrowed from the said W. Bayard Cutting for that purpose and judgment at law thereupon, and for defaults in the payment of the interest of its consolidated bond- and for the payment of the interest on each of the underlying bonds as hereinbefore stated, which defaults had continued the required time and for the adjudgment by the said several trust companies; that by reason of said defaults and the continuation thereof the whole of the said bonded indebtedness, principal and interest, was due and then payable; the lines of the railroad of the Florida Railway and Navigation Company, as it then existed, was upon bills duly filed by the said W. Bayard Cutting and by the said several trust companies, representing the holders of said bonds, in the circuit court of the United States for the northern district of Florida, for the foreclosure of said liens and for the sale of the property thereunder.

That on that date H. Rieman Duval was appointed receiver of the said court, and took the said property into his hands as receiver; that afterwards, to wit, on the — day of March and the — day of July, 1889, under decrees rendered in each of the said several causes, the entire properties were sold severally under their first liens as a whole under the lien of mortgage created by the Florida Railway and Navigation Company.

281 That the amounts realized from said sale were far short of even the accumulated interest on said indebtedness, and, with the exception of one case, was far less than the interest on each particular indebtedness.

That W. B. Cutting, as agent, bought the said property, and he and his associates organized the complainant company in this cause, and the company was admitted into the possession of the property so bought, all terms and conditions being previously complied with, on the first day of May, A. D. 1869, and has remained in possession since then.

That the rights and interest of the complainant in the said several properties relates back to the date of the said several respective

mortgages created as aforesaid, and that your orator has thus become entitled to all the assets of said company, included in which is the right to recover the amount of $140,812.47, unlawfully collected by the said Barnes, as comptroller, from the Florida Railway and Navigation Company, and to any and all such sums as at other times may have been in the same way unlawfully collected from the said receiver during the continuation of his management of said property as such.

Your orator avers that it is in no other wise whatever the successor to the Florida Railway and Navigation Company, and that it holds its property under and by virtue of liens created a long time in the advance of the pretended assessments under chap. 3558 of the Laws of Florida.

Further complaining, your orator says that on the 8th day of June, 1891, without any previous notice whatever to your orator, there was approved by the governor of the State of Florida an act, being chap. 4703 of the Laws of Florida, reference to which is hereby made as a part of this bill.

282 That, pretending to act under the authority of said act, the comptroller of the State of Florida has directed and the sheriff of Leon county intends and has undertaken to seize and sell the property of your orator for the State and county taxes so illegally assessed for the years 1879, 1880, and 1881; all of which doings are greatly to the wrong and injury of your orator as tending to injure the credit of its company and affects prejudicially the values of its property and will cast a cloud upon the title of your orator thereto. Attached hereto is a copy of the comptroller's warrant to said sheriff, marked — and made a part of this bill.

That your orator is informed and believes that the said sheriff, unless restrained by the order of the honorable court, will sell the property of your orator for the purposes as set forth, and it attaches hereto a copy of the published notice given by the sheriff of his intention to sell said property on the 7th day of November, 1892, which is marked Exhibit — and made a part of this bill.

That all of these wrongs and injuries to your orator in his right and title to his property are against equity and good conscience; and inasmuch as your orator is without relief except in a court of equity, where such things are cognizable,

To the end, therefore, that the defendant- may, if they can, show cause why your orator should not have the relief hereinafter prayed, and that they and each of them may upon their corporal oath full, true, direct, and perfect answer make to all and singular the premises, and that your honor will by a decree of this honorable court decree:

1st. That all of its entire line of road from Jacksonville to Chattahoochee, and the branches to Monticello and St. Marks,
283 and the lines of road from Fernandina to Cedar Keys and from Waldo to Tampa are covered by the exemption from taxation as provided in the internal-improvement act.

2nd. That its line of road from Jacksonville to Lake City is not subject to taxation for State or county purposes for the full period of

thirty-five years from the — day of ——, A. D. 1866, the date of its completion.

3rd. That its line of road from Lake City to Quincy, with the branch from Drifton to Monticello, and the road from Tallahassee to St. Marks, are not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1866, the date of its completion.

4th. And that its line of road from Fernandina to Cedar Keys is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1864, the date of its completion.

5th. That your orator's line of railroad from Waldo to Ocala is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1877, the date of its completion.

6th. That your orator's line of railroad from Ocala to Plant City is not subject to taxation for State or county purposes, and will not be for the full period of thirty-five years from the date of its completion to the waters of Tampa bay.

7th. That your orator's line of railroad from Quincy to Chattahoochee is not subject to taxation for State or county purposes for the full period of thirty-five years from the — day of ——, A. D. 1874, the date of its completion.

284 8th. That your orator's lines of road and no part of them are subject to the payment of the tax assessed against them in A. D. 1885 for the years 1879, 1880, and 1881.

That each and every the assessments made by the said William D. Barnes for taxes for State or county purposes on the lines of road of your orator for either and each of the years 1879, 1880, 1881, 1882, 1883, 1884, 1885, and 1886 are illegal and void.

May it please your honor to grant unto your orator the injunction of this court, directed to the said William D. Bloxham, as comptroller, and to John A. Pearce, as sheriff of Leon county, State of Florida, restraining them and each of them from making any levy or sale, or attempting the same, on the property of the lines of your orator's railroad on account of any of the assessments for taxes made thereon for the said years of 1879, 1880, 1881, 1882, 1883, 1884, 1885, or 1886, and from executing or attempting to execute any warrants of sale issued under said assessments or either of them, and restraining the said William D. Bloxham from hereafter making any further assessments for such purposes or for any purposes of taxation upon the lines of your orator's road which is upon the routes between Jacksonville and Chattahoochee, or the branches therefrom to Monticello or St. Marks, or on the line from Fernandina to Cedar Keys, or from Waldo to the waters of Tampa bay, until the expiration of thirty five years from the date of the completion of the said several lines.

And that it be decreed that the said William D. Bloxham do pay to your orator all moneys which have been so improperly collected on the account of said assessments for taxes, and for such other and further relief as to equity may appertain.

285 May it please your honor to grant unto your orator the State's writ of subpœna, to be directed to the said defendants, William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, commanding them, on a day to be named, to appear before this court and make full answer under oath to all and singular the premises, and to abide the decree of the court herein.

(Signed) THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY,
By JOHN A. HENDERSON, *Vice-President.*

JOHN A. HENDERSON,
Solicitor for Complainant.

STATE OF FLORIDA, }
Leon County. }

Personally came John A. Henderson, who, being duly sworn, says that he is the vice-president of the complainant company; that he has made the foregoing bill of complaint and knows the contents thereof, and the same is true as to all matters stated therein upon knowledge, and that as to all statements on information and belief therein made he believes them to be true.

(Signed) JOHN A. HENDERSON.

Subscribed and sworn to before me this Nov'r 2nd, 1892.

COUNCIL A. BRYAN,
Cl'k Ct. Ct. Leon Co., Fla.

286 EXHIBIT "A."

Copied from the assessment-roll of the several counties named, as made for the year A. D. 1884, except as herein stated, and giving therefrom the style of the "name of tax-payer," description of property, aggregate value, and total amount of tax assessed for State and county purposes.

County.	Name of tax payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
Gadsden..	Florida Railway & Telegraph Navigation Company:			
	35 miles of main track, valued at $7,000 per mile..	$245,000		
	$\frac{46}{100}$ miles of side track, valued at $3,500 per mile ... :	1,610		
	Pro rata value of rolling stock, including engines, cars, and appurtenances.	17,603		
	20 miles telegraph lines, valued at $50.....	1,000		
			$265,293	$3,183.51

Exhibit "A"—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
287				
Leon	Florida Railway & Navigation Company:			
	Length of main track, 26 miles	$182,000		
	Length of branch road, 11 miles including right of way and road-bed.	44,000		
	Side track, $1\frac{42}{100}$, & main track	4,900		
	Pro rata of rolling stock, including value of locomotives, engines, passenger & freight, construction, and all other cars and appurtenances	12,000		
	C. F. C lots 70 & 71, 72, 73, 87, 88, & 90	(300)		
	With the sections and other lands	(800)		
	All the sec. houses and warehouses &c., &c., as therein described.	(300)		.....
	Valuations of town or city lots and improvements	12,500		
	Value of all other personal property (except animals)	23,693		
			280,993	4,355.38
Wakulla	Florida Railway & Navigation Company		45,192	564.90
288				
Jefferson	Florida Railway & Navigation Company:			
	18 miles main track	$12,600		
	4 " " "	16,000		
	$\frac{55}{100}$ miles side track	1,820		
	Pro rata value of rolling stock, including cars and appurtenances	11,155		
	1 lot and depot at Mont	2,000		
	1 depot at Lloyds	2,500		
	Lot at Drifton	305		
	Lot at Williamsburg	500		
	Value of all other personal property (except animals)			
			160,240	2,163.24
Madison	Florida Railway & Navigation Company:			
	Total value, including rights of way, road-bed, side track, and main track			
	Pro rata value of rolling stock, including engines, cars, and appurtenances, 34 miles	240,065		
	Value of all other personal property (except animals)	17,175		
			257,240	7,073.60

Exhibit "A"—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
289				
Suwannee.	R. R. F. Railway & Navigation Co.:	(???)		
	25 miles of track	175,000		
	$\frac{16}{100}$ miles side track	1,260		
	Pro rata share R. stock, engines, &c.	12,630		
	Depots Live Oak, Houston, & Welborn	2,780		
			191,670	2,300.05
Columbia.	Florida Railway & Navigation Co.:			
	21 miles main track, $\frac{45}{100}$ side track, and *pro rata* rolling stock	159,219.83		
			159,219.83	2,229.08
Baker..	Fla. Railway & Navigation Co.:			
	(?) (???)	.....	181,245	2,537.46
Duval. ...	Florida Railway & Navigation Co.:			
	Right of way, road-bed, side track	398,160		
	Personal, rolling stock, *pro rata*	27,830		
			425,990	5,963.87
290				
Nassau....	Florida Railway & Navigation Company:			
	48 miles of main track, valued at 7,000 per mile	336,000		
	$2\frac{44}{100}$ miles of side track, valued at 3,500 per mile (F. & T. included)	8,540		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	24,251		
	Wharf improvements at the foot of Beach St., Fernandina, known as the steamship wharf.	3,400		
	Railroad shops in Fernandina, fixtures, machinery, & tools in said shop	4,299		
	Value of all other personal property (except animals)	11,300		
			387,790	4,847.37
Clay.....	Florida Railway & Navigation Company:			
	$6\frac{80}{100}$ miles at 7,000, 40,600; $\frac{34}{100}$ miles side track, valued at 3,500 per mile, 840; *pro rata* rolling stock, engines, cars, &c	.....	44,370	510.27
Bradford..	Fla. R'y & N. Co.:			
	Total length of main track in Bradford Co., 20 miles. Total value of road, including right of way, road-bed, side track, & main track	143,045		

Exhibit "A"—Continued.

County.	Name of tax-payer and description of property.		Aggregate value of property.	Total amount State and county taxes.
	Pro rata value of rolling stock, including value of locomotives, engines, passenger, freight, platform, construction, and other cars and appurtenances..	10,205	153,250	1,477.51
291				
Alachua..	Railroad, Florida Railway & Navigation Co.:			
	Miles of main track at 7,000 per mile.....	406,000		
	Miles of side track, 3,500 per mile.	6,790		
	Value of all other personal property (except animals)..	29,310	442,100	7,073.60
Levy.....	Florida Railway & Navigation Co.:			
	$39\frac{80}{100}$ miles main track, valued at 7,000 per mile	278,600		
	$\frac{63}{100}$ miles side track, valued at 3,500 per mile..... ...	2,205		
	Total value, including road-bed, right of way, side track, & main track.	280,805		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,101.15		
	Aggregate amount.	300,913.15	.....	3,310.04
Marion..	$40\frac{41}{100}$ main track, at 7,000	283,290		
	$1\frac{}{100}$ side track, at 3,500	3,535		
	Total value, including rights of way, road-bed, side & main tracks..	286,825.00		
	Pro rata value of rolling stock, including engines, cars, & appurtenances	20,446.67		
	Aggregate amount to be assessed.....	307,271.67	.....	4,301.81
Sumter....	Florida Railway and Navigation Company:			
	Certain lands (described, but not levied on).....			
	20 miles track	140,000		
	$\frac{46}{100}$ side track.....	1,610		
	Pro rata rolling stock.....	10,110	151,720	1,820.64

292 Copy.

B.

STATE OF FLORIDA:

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *April* 24, 1885.

State of Florida to Samuel C. Tucker, sheriff of Alachua county, Greeting:

You are hereby commanded to collect from the Florida Railway and Navigation Company, by levy and sale, in the same manner as now provided by law for the sale of property under execution from the circuit court, of the shops, fixtures, rolling stock, or any part thereof, or of the entire road or roads belonging to or owned by said company, the sum of one hundred and forty thousand and seventy-three dollars and sixty-one cents ($140,073.61), that being the amount of State and county taxes assessed against the Tropical Peninsular, Florida Transit, Florida Transit and Peninsular, Florida Central, Jacksonville, Pensacola & Mobile, Florida Central and Western, and Florida Railway and Navigation Company's railroads, all now owned or operated by the Florida Railway & Navigation Company, for the years 1879, 1880, 1881, 1882, 1883, and 1884, which are now due and unpaid, together with the cash and expenses of sale, and you will make due return hereof to this office.

Witness my hand and seal of office this the 24th day of April, A. D. 1885.

W. D. BARNES,
Comptroller.

293 Copy.

C.

STATE OF FLORIDA:

140,073.61
738.86

$140,812.47

In God we trust.

COMPTROLLER'S OFFICE,
TALLAHASSEE, FLA., *May 28th*, 1885.

Received of the Florida Railway and Navigation Company the sum of one hundred and forty thousand and seventy-three $\frac{61}{100}$ dollars, assessed against the several railroads described in the following advertisement of the properties of the same, as the State and county taxes thereon, as therein expressed, and received also the sum of seven hundred and thirty-eight $\frac{86}{100}$ dollars as the costs and expenses of such collection.

(This does not include the taxes assessed against the Fernandina and Jacksonville Railroad property for the year A. D. 1883.)

Which said payment is made by the said Florida Railway and Navigation Company because of the levy and threatened sale, as indicated in said advertisement, and to avoid the sacrifice and injury which will be done to its property by such sale, and under protest that the amount so levied and assessed is not the proper amount due on said account by the said company, but is in excess thereof, and that this payment is not voluntary, but is made under duress, and that it reserves to itself the right to recover such excess of payment as shall be found to have been herein made in any manner that it shall be available whereby so to do. This payment is made for the said Florida Railway and Navigation Company by Mr. J. Aug. Johnson, attorney.

(Signed) W. D. BARNES,
[L. S.] *Comptroller.*

294 Copy.

"D."

(*Warrant.*)

To John A. Pearce, sheriff of Leon county, State of Florida, Greeting:

You are hereby commanded to collect from the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road or such part thereof as may be located in this State, belonging to or operated by said company, the sum of ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), that being the amount of State and county taxes assessed against the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, now constituting the Florida Central and Peninsular railroad, under the provisions of chapter 3558, Laws of Florida, for the years eighteen hundred and seventy-nine (1879), eighteen hundred and eighty (1880), and eighteen hundred and eighty-one (1881),
295 which said amount is now due and unpaid, together with the costs and expenses of sale as provided by law, and you will make due return thereof to this office.

Witness my hand and seal of office this the fifth (5th) day of October, A. D. 1892.

[SEAL.] W. D. BLOXHAM,
Comptroller.

(*Return.*)

Came to hand this 5th day of October, 1892, & executed the within by levying on the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, the road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chattahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, this the 5th day of Oct., A. D. 1892.

JOHN A. PEARCE,
Sheriff Leon Co.

Levy & ret., 1.10.

Statement Showing the Amount of Taxes Assessed under the Provisions of Chapter 3558, Laws of Florida, upon Railroads and Property Thereto Belonging which were Omitted from the Assessment-rolls of 1879, 1880, *and* 1881.

Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

Counties.	Valuation.	General revenue.	General school tax.	Total taxes for State purposes.	County revenue.	County school.	County special.	Total taxes for county purposes.
Suwannee, taxes 1879, 1880 and 1881..	$163,580	$3,108.02	$490.74	$3,598.76	$1,962.96	$1,226.85	$981.48	$4,171.29
Alachua, taxes 1879 and 1880	250,000	3,000.09	500.00	3,500.00	2,000.00	1,250.00	1,000 00	4,250.00
Baker, taxes 1879, 1880 and 1881	156,960	2,982.24	470.88	3,453.12	1,255.68	1,098.72	1,098.72	3,453.12
Bradford, taxes 1879, 1880 and 1881..	131,410	2,496.79	394.23	2,891.02	1,051.28	1,051.29	262 82	2,365.39
Clay, taxes 1879, 1880 and 1881.	39,720	754.68	119.16	873.84	417.06	357.48	218.46	993.00
Columbia, taxes 1879 and 1880.....	137,880	1,654 56	275.76	1,930.32	1,103.04	689.40	551.52	2,343 96
Gadsden, taxes 1879 and 1880.....	228,880	2,746.56	457.76	3,204.32	1,831.04	915 52	915.52	3,662.08
Jefferson, taxes 1879 and 1880	130,560	1,566.72	261.12	1,827.84	783.36	261.12	2,252.16	3,296 64
Levy, taxes 1879, 1880 and 1881....	255,390	4,852.41	766.17	5,618.58	2,043.12	2,298 52	.....	4,341 64
Leon, taxes 1879, 1880 and 1881 ...	206,200	3,917.80	618 60	4,536.40	2,474.40	1,546.50	3,402.30	7,423.20
Madison, taxes 1879, 1880 and 1881...	223,270	4,242.13	669.81	4,911.94	2,344.34	1,562.90	3,907.23	7,814.47
Nassau, taxes 1879, 1880 and 1881 ..	285,500	5,424.50	856.50	6,281.00	3,426.00	2,569.50	1,998.50	7,994.00
Wakulla, taxes 1879, 1880 and 1881...	30,120	572.28	90.36	662.64	361.44	240 96	180.72	783.12
	$2,239,470	$37,318.69	$5,971.09	$43,289.78	$21,053.72	$15,068.76	$16,769.43	$52,891.91
Savannah, Florida and Western Railroad Company.								
Hamilton, taxes 1879 and 1880.	$56,000	$560.00	$112.00	$672.00	$336.00	$420.00	$84.00	$840.00
Suwannee, taxes 1879 and 1880.	32,000	320.00	64 00	384.00	256.00	160 00	128.00	544.00
Totals	$88,000	$880.00	$176.00	$1,056.00	$592.00	$580.00	$212.00	$1,384.00

297 *Statement Showing the Amount of Taxes Collected by the Comptroller from the Defaulting Railroad Companies, as Required by Law, and also Showing how the Funds so Received were Disbursed.*

Florida Railway and Navigation Company.

Received from said company on account of—	State taxes.	County taxes.
Gadsden county, taxes 1881, 1882, 1883 & 1884	$4,907 31	$7,395.39
Leon county, taxes 1882, 1883 & 1884	4,174.09	9,448.04
Wakulla county, taxes 1882, 1883 & 1884	933 67	1,460.03
Jefferson county, taxes 1881, 1882, 1883 & 1884	3,858.42	8,091.50
Madison county, taxes 1882, 1883 & 1884	4,373.18	9,922.32
Suwannee county, taxes 1882, 1883 & 1884	3,046.43	5,143 53
Columbia county, taxes 1881, 1882, 1883 & 1884	3,378.18	6,459.39
Baker county, taxes 1882, 1883 & 1884	3,072.51	5,837.67
Duval county, taxes 1879, 1880, 1881, 1882, 1883 and 1884	8,463.96	13,489.91
Nassau county, taxes 1882, 1883 & 1884	6,321.82	11,662.78
Clay county, taxes 1882, 1883 & 1884	802 12	1,131.47
Bradford county, taxes 1882, 1883 & 1884	2,342.80	1,722.75
Alachua county, taxes 1881, 1882, 1883 & 1884	10,308.84	21,897.76
Levy county, taxes 1882, 1883 & 1884	4,471.04	5,980.68
Marion county, taxes 1882, 1883 & 1884	4,968 49	9,170.64
Sumter county, taxes 1883 and 1884	1,945.63	3,891.26
	$67,368.49	$122,705.12

Sheriff's Sale.

298 Under and by virtue of a warrant issued by Hon. W. D. Bloxham, comptroller of the State of Florida, bearing date of October 5th, 1892, to me directed as sheriff of Leon county, against the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, for State and county taxes due and unpaid for the year- 1879, 1880, and 1881, for ninety-six thousand one hundred and eighty-one dollars and sixty-nine cents ($96,181.69), together with the costs and expenses, commanding me to collect by levy and sale, in the same manner as now provided by law for the sale of property under executions from the circuit court, of the shop, fixtures, rolling stock, or any part thereof, or of the entire road, or such part thereof as may be located in this State, belonging to or operated by said company, I have this day levied upon and will expose for sale to satisfy said warrant, in front of the court-house door, in the city of Tallahassee, during legal hours of sale, on 1st Monday of November, being 7th day of said month, being legal-sales day, the following property of the Florida Central and Peninsular Railroad Company, formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad, to wit: The road and road-bed and appurtenances thereto belonging, together with the right of way, extending from Jacksonville to Chat-

tahoochee, from Fernandina to Tampa, and from Waldo to Cedar Keys, levied upon as the property of the Florida Central and Peninsular Railroad Company, embracing the lines or divisions
299 thereof formerly known as the Florida Railway and Navigation Company, embracing the lines or divisions thereof formerly known as the Jacksonville, Pensacola and Mobile railroad, the Florida Central and Western railroad, the Florida Central railroad, and the Atlantic, Gulf and West India Transit railroad.

This 5th day of October, A. D. 1892.

JOHN A. PEARCE,
Sheriff Leon County.

Your orator further shows that on the 2nd day of January, A. D. 1893, the said W. D. Bloxham, comptroller, and John A. Pearce, sheriff aforesaid, filed their answer to said bill, and, after exceptions sustained thereto, filed their further answer on July 29th, 1893, and that in and by their said answer admitted—

That your orator is a corporation organized under the laws of Florida on the 19th day of November, 1888, and acquired the lines of railroad as alleged in its said bill, and the lines of railroad designated as "A," "B," "C," "E," "F" were constructed as alleged, and that they accepted the provisions of the internal-improvement act and were accepted by the trustees of the said internal-improvement fund as completed, and that the lines of road designated as "A," "B," "C," "E" were sold by the trustees of the internal-improvement fund for non-compliance with the provisions of the internal-improvement act, for non-payment of semi-annual interest, as alleged in said bill, and were purchased by the purchasers named therein, and that complainant by the mesne conveyances, as alleged in said bill, afterwards became the owner of the said railroads.

300 And by said answer said defendants further admitted that William D. Barnes made assessment on the lines of the Florida Railway and Navigation Company under chapter 3558, Laws of Florida, and that chapter 4703, Laws of Florida, was passed and approved as alleged in the said bill, and that under the authority of the last-named act and the acts to which it related they had seized and levied upon the property of your orator, as shown by the comptroller's warrant annexed to the bill of complaint, to pay the taxes due on the same for the years 1879, 1880, and 1881 and assessed upon the same for the said years, and that they would sell the property for such purpose, as shown by the published notice annexed to said bill, unless the taxes so assessed against the said property for the years 1879, 1880, and 1881 were paid, together with the costs and expenses before such sale.

That to those portions of said bill claiming that there was no lien on the lines of road acquired by the Florida Railway and Navigation Company at such time of acquirement, and that chapter 3558, Laws of Florida, was unconstitutional and void, in that it did not provide for a uniform and equal rate of taxation and did not secure a just valuation and assessment for all classes of property, and that the State's power of taxation was exhausted over the property when the assessment was made, as shown by Exhibit "C," and those por-

tions of the bill denying the right of the State to levy a tax or additional tax on the values of said property of the Florida Railway and Navigation Company, as set forth in said bill, and to those portions of said bill relating to the item of $10,000,000 of bonds and the disposition of $5,000,000 thereof and the foreclosure and sale of the properties of the Florida Railway and Navigation Company and the purchase of the same by W. B. Cutting, as showing any reason why the taxes sought to be collected by the levy and proposed
301 sale were not due to the State of Florida, the said defendants in and by their answer claimed all the benefits they could have from a demurrer interposed thereto.

That the said answer denied that the grant of exemption from taxation given the several lines of railroad mentioned in the bill in the aid of construction was given without reference or limitation as to the proprietorship therein or any changes in such ownership, and as to so much of the bill as claimed that such exemption inured to the Florida Central and Peninsular Railroad Company by reason of its purchasing and acquiring said lines of road at foreclosure sale and otherwise, as alleged in the bill, said defendants claimed all the benefits they could have had from a demurrer interposed thereto.

That even if such exemption from taxation was intended and contemplated by the legislature, it was powerless to grant the same for the reason that said exemption was not extended to all railroad companies and their property in the State of Florida; that such exemption, if granted, was gratuitous and without consideration, and the people of Florida were not precluded from revoking the same by subsequent organic law and legislation and imposing upon the said lines of railroad the same burdens of taxation imposed on other corporations and persons.

That even if the lines of road constructed and the companies organized prior to the constitution of 1868 were so exempt, as claimed in the bill, such exemption did not pass to petitioner by the several mesne conveyances mentioned in the bill, for the reason that by said acts there *was* only exempted the capital stock, railroad, and other property of said several lines, and that with the exception of the right of way and probably a portion of the road-bed and perhaps a few other insignificant items the railroad property upon which the taxes are now sought to be collected is not the same property which was the property of the said several companies to which the bill
302 claims the exemption from taxation attached, and that your orator had not proffered or tendered the tax upon any part of the taxed property.

That by the purchases, transfers, and consolidations mentioned in the bill your orator acquired only the property of the said several constituent companies, and did not acquire any of said railroad's franchises, privileges, or immunities, and alleged exemption from taxation as a railroad corporation duly chartered and empowered to exercise the franchises and enjoy the immunities and privileges thereof in the State of Florida.

The said answer denies that by the sale of the said line of road from Jacksonville to Chattahoochee and branches to Monticello and

(*and*) St. Marks to Edward J. Reed, and by deed of said Reed of Feb'y 28th, 1882, the Florida Central and Western Railroad Company was invested with all the rights and privileges and immunities covered by said mortgage and of the charter and statutory benefits of the several *constituent companies*.

The said answer denies that by reason of the consolidation of the several constituent companies into the Florida Railway and Navigation Company there was anything in or any existing laws of such property acquired by which they or your orator could claim or receive any immunity or exemption from taxation or from the taxes demanded from the State therein. It denies that the legislature had the constitutional right and power to exempt from taxation all of the lines of road built on the lines indicated in the 4th section of the internal-improvement act, and denies that the exemption of said lines from taxation for the period of of thirty-five years became by contract of the State a part and parcel of the property value of said roads, and that this exemption became a part of the value of the property which your orator acquired in its acquisition of each
303 and all of its said lines, and that this was the law of the property as declared by the courts of this State when the Florida Railway and Navigation Company acquired the same, and that as to so much of the bill as claims that your orator is exempt from the payment of the taxes sought to be collected by levy and sale, as therein mentioned, defendants claim all the benefits they could have from a demurrer interposed thereto.

That said answer denies the allegations of said bill that neither the internal-improvement act nor acts amendatory thereof, wherein was granted the alleged exemption, nor the acts under which said lines of road were constructed, contained any reservation of power in the legislature to alter, amend, or repeal the said immunity of exemption from taxation, and that any and every act of the State attempting to revoke, repeal, or amend the same was violative of your orator's rights as guaranteed by the Constitution of the United States. It avers that chapter 3558, Laws of Florida, was a valid act, and that it sufficiently specified the Florida Railway and Navigation Company, because said company was the owner of the railroad property that had escaped taxation for the years 1879, 1880, and 1881.

To that part of the bill which asks relief as to the $140,812.47 paid to the comptroller, as therein alleged, defendants aver that even if complainant is entitled to such relief it can only be granted by the legislature, and the court has no jurisdiction or power to grant the relief as to such part payment of taxes.

Said answer further denies that a lien was not contemplated in favor of the State against the Florida Railway and Navigation Company at the time it acquired the lines of road, for that by a joint resolution of the legislature of 1881 the comptroller and governor were directed to employ counsel to bring suits to collect taxes due,
but never up to that time paid by certain lines of railroad,
304 including the lines of said last-named company, and the intention of the State to collect such taxes was thereby made manifest.

Your orator further shows that on the 28th day of July, A. D. 1893, his honor John W. Malone, judge of the second judicial circuit of Florida, filed in said cause his certificate of his disqualification to hear and determine the same for the reason that he was personally interested in the result thereof.

That on the second day of September your orator filed its general replication in the usual form to the aforesaid answer of defendants William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida.

That on the 13th day of November, A. D. 1893, the cause came on for hearing on motion for injunction *pendente lite* before the honorable judge of the third circuit, at Live Oak, upon bill and answer, and after argument by the counsel of the respective parties, in which there was no intimation given nor allegation made that there was involved in the controversy any dispute of the alleged and admitted changes of entire ownership of the several properties involved, but therein it was contended by the solicitor for the defendants and denied by the solicitor of the complainant that it was lawful to assess and collect the tax for the years 1879, '80, and '81, notwithstanding such entire change of ownership as alleged. It was agreed in writing that the said hearing should be final, and the decree to be entered thereon was to be a final decree.

And after due consideration the said judge, on the 25th day of November, A. D. 1893, rendered a final decree therein in the words and figures as follows:

In the Circuit Court, 2nd Judicial Circuit of Florida in and for the County of Leon. In Chancery.

305	THE FLORIDA CENTRAL & PENINSULAR Railroad Company vs. WILLIAM D. BLOXHAM, Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.	Bill for Injunction & Relief.

The above-entitled cause, coming on to be finally heard by the undersigned, judge of the 3rd judicial circuit (the judge of the 2nd judicial circuit being disqualified), was heard upon bill and answer, and after argument by John A. Henderson, solicitor for the complainant, and William B. Lamar, attorney general for the State of Florida, solicitor for the defendants, and the court, being fully advised of its opinion herein, doth hereby order, adjudge, and decree as follows, to wit:

1st. That the several lines of railroad now owned by complainant and described in said bill of complaint, to wit, "the line of railroad from Lake City to Quincy, Florida, with branches to Monticello and St. Marks, Florida; the line of railroad from Lake City to Jacksonville, Florida; the line of railroad from Waldo to Ocala, Florida, and — line of railroad from Ocala to Tampa bay, Florida," are and were in A. D. 1885 each and all subject to taxation as other property in the

State of Florida, even though said lines of railroad were built on the lines indicated by the general internal-improvement act of A. D. 1855–'6, chap. 610, Laws of Florida, and under the provisions
306 contained in said general internal-improvement act and at the time or times severally alleged in complainant's bill.

2nd. That the several lines of railroad aforesaid, with the branch aforesaid, were not exempt from taxation for the years A. D. 1884, A. D. 1883, and A. D. 1882, and that the taxes thereon demanded of the Florida Railway and Navigation Company thereon under an assessment made in A. D. 1885 and paid under protest, as alleged by complainant, were lawfully exacted and collected from said company, notwithstanding portions of some of the aforesaid lines of railroad or all of the same were constructed under the provisions of the general internal-improvement act of Florida, chap. 610, Laws of Florida, and notwithstanding said lines of railroad were built on the lines indicated thereby and therein.

3rd. That the said lines of railroad properties of complainant are subject to taxation for the year A. D. 1886, and that complainant's prayer that defendants be enjoined from assessing and collecting the same for the year A. D. 1886 be, and the same is hereby, denied.

4th. That the taxes now attempted to be collected on the said several lines of railroad owned by the complainant by the defendant- William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, under assessment made thereon in A. D. 1885, by virtue of a statute passed A. D. 1885, chapter 3558, Laws of Florida, on the aforesaid lines of railroad and branches, now the property of the complainant, but which were so assessed on the same for the years A. D. 1879, A. D. 1880, and A. D. 1881, and which were assessed then as the property respectively of the Jacksonville, Pensacola and Mobile Railroad, the Flo-
307 rida Central and — Railroad, and the Transit Peninsular Railroad Companies, were and are not liens on said several lines of railroad for the several years aforesaid for which said assessments were made, and were not and are not assessable against the Florida Railway and Navigation Company; that the said statute under which the assessments were made for the years last aforesaid was a special statute for the collection of general revenue and did not provide or attempt to provide a uniform, equal, and just assessment or collection of taxes for the years A. D. 1879, A. D. 1880, and A. D. 1881, and that so much and that such part of said statute of A. D. 1885, chap. 3558, Laws of Florida, as attempts to provide for and assessment and collection of taxes for the years A. D. 1879, 1880, and 1881 is, as to the complainant's said property, unconstitutional and void, and the State of Florida, by its legislature, having repeatedly and expressly limited its right to assess property omitted from assessment for taxes for more than three years next preceding the assessment thereof, the said assessments so made, as aforesaid, or attempted to be made on the said properties of the complainants for the years A. D. 1879, A. D. 1880, and A. D. 1881, under the provisions of the act aforesaid, and the said warrant

and tax levy *is* hereby adjudged and decreed to be unequal, unlawful, unconstitutional, and void.

6th. And that the said defendants, the said William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined from selling or attempting to sell the said several lines of railroad of complainants or any part or parts thereof under said assessment
308 for the years A. D. 1879, A. D. 1880, and A. D. 1881, and from in any way or manner interfering with or attempting to collect the said taxes for said years last aforesaid.

5th. That defendants pay the cost of this cause, to be taxed by the clerk of the circuit court of Leon county, Florida.

Ordered, adjudged, and decreed at chambers, at Live Oak, in the 3rd judicial circuit of Florida, this the 25th day of November, A. D. 1893.

J. F. WHITE,
Judge of the 3rd Judicial Circuit.

Your orator would further show that from the said final decree rendered by the judge of the 3rd judicial circuit of Florida on the 25th day of November, A. D. 1893, both your orator and the said defendants entered in the office of the clerk of the circuit court for Leon county their appeal to the ensuing term of the supreme court of the State of Florida then to be held at Tallahassee, in said State, commencing on the 12th day of June, A. D. 1894.

That after a hearing in the said cause and, to wit, on the 12th day of June, A. D. 1895, the said supreme court rendered its opinion and made its order and mandate to the judge of the second judicial circuit of Florida reversing portions, affirming portions of, and modifying the aforesaid decree of November 25th, 1893, and commanding that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had.

Your orator would further show that afterwards, to wit, on the 18th day of October, A. D. 1895, and before any decree was rendered in said circuit court in conformity with the mandate and opinion of said supreme court, your orator, with leave of the said cir-
309 cuit court first had and obtained, filed its supplemental bill, in the nature of a bill of review, in the said circuit court against the defendants, W. D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, in said State, and praying that upon the grounds of newly discovered evidence and upon other facts and for various reasons therein particularly set forth that the final decree rendered in said cause be reviewed, reversed, and modified.

That to orator's said supplemental bill in the nature of a bill of review the said defendants interposed their demurrer, and upon a hearing thereof before the judge of the 3rd judicial circuit of Florida on the 26th day of February, A. D. 1896, the said judge made his order and decree overruling the said demurrer, and from the said

order overruling the said demurrer the said defendants entered their appeal to the ensuing term of the supreme court of Florida, commencing on the 9th day of June, A. D. 1896.

That after hearing upon said appeal the said supreme court rendered its opinion, and on the 22nd day of May, A. D. 1897, sent down its mandate to said circuit court, which is in the words and figures following, to wit:

Mandate from Supreme Court.

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants,
310 the decree of said circuit court was rendered February 26th, A. D. 1896, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal, agreeably to the laws of said State in such case made and provided, fully and at large appears:

And whereas, at the January term of said supreme court, holden at Tallahassee, A. D. 1897, the said cause came on to be heard before the supreme court on the said transcript of the record, and was argued by the counsel, in consideration whereof it was considered by said supreme court that the said decree overruling the demurrer will be reversed and the cause remanded with further directions that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court, upon which a mandate will again issue; and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahoochee and branches. It is further ordered that the appellants do recover of the appellees their costs by them in this behalf expended, which costs amount to the sum of fifty-seven and $\frac{50}{100}$ dollars; therefore

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, 1897.

[SEAL.] B. B. WILSON,
Clerk Supreme Court of Florida.

311 Your orator further shows that on the same day, to wit, the 22nd day of May, A. D. 1897, the said supreme court made, is-

sued, and sent to the said circuit court its further order and mandate to the said circuit court upon the appeal first herein maintained from the final decree entered by the judge of the 3rd judicial circuit on November 25th, 1893; which said mandate is in the words and figures following, to wit:

312 *Mandate from Supreme Court.*

The State of Florida to the honorable the judge of the circuit court for the second judicial circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial circuit of Florida in and for the county of Leon, in a cause wherein The Florida Central and Peninsular Railroad Company was plaintiff and William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, were defendants, the decree and order of the said circuit court were rendered November 25th, A. D. 1893, as by the inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January term of said supreme court, holden at Tallahassee, A. D. 1895, the said cause came on to be heard before the said supreme court on the said transcript of the record and was argued by counsel; in consideration whereof it was considered by said supreme court that the said decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing an injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct a return of the taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, be, and is hereby, affirmed except that portion which holds the line of railroad of said appellee company from Ocala to Tampa subject to taxation aforesaid; the said decree be, and is hereby, reversed in so far as it makes subject to taxation for the years named that portion of the line of railroad of said

313 appellee company from Ocala to Tampa, described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa. So much of said decree as holds that the statute under which the assessments were made and under which proceedings are being taken by the appellants to collect taxes of the appellee company is a special statute for the collection of general revenue is unconstitutional and void be, and is hereby, reversed. So much of the decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the appellants from selling or attempting to sell the same, under the assessment aforesaid, or any part thereof, for the taxes of said years, and from in any manner interfering with or attempting to collect said taxes, be, and is hereby, reversed, and the cause is remanded for

further proceedings in accordance with the opinion of the court filed herein; and it is further ordered that the appellants do recover of the appellee their costs by them in this behalf expended, taxed at the sum of seventy-three dollars and thirty cents; therefore

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said decree of the circuit court notwithstanding.

Witness the Honorable R. F. Taylor, chief justice of said supreme court, at Tallahassee, this 22nd day of May, A. D. 1897.

[SEAL.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

314 Your orator shows that on the 19th day of June, A. D. 1897, on motion of defendants, his honor John F. White, judge of the 3rd judicial circuit, rendered the following decree in said cause:

In the Circuit Court for Leon County, in the Second Judicial Circuit of the State of Florida. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM D. BLOXHAM, as Comptroller of the State of Florida, and JOHN A. PEARCE, as Sheriff of Leon County.

This cause came on to be further heard, and, in obedience to the mandate of the supreme court of the State of Florida and upon motion of counsel for the defendants, it is ordered, adjudged, and decreed as follows, viz:

1. That the decree heretofore made in this cause on the 20th day of February, A. D. 1896, overruling the demurrer to the plaintiff's supplemental bill in the nature of a bill of review, be, and the same is hereby, reversed and set aside, and that said demurrer be sustained and said bill be dismissed, at plaintiff's costs.

2. That so much of the decree heretofore made in this cause on the 25th day of November, A. D. 1893, as holds the lines of railroad therein described subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refuses an injunction against the assessment and collection of taxes thereon for 1886, and refuses to direct a return of taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company, except that portion which holds the line from Ocala to
315 Tampa subject to taxation, as aforesaid, is affirmed.

3d. That said decree is reversed in so far as it makes subject to taxation for the years named that portion of the line from Ocala to Tampa described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa.

4. That so much of said decree as holds that the statute under which the assessment was made and under which proceedings are being taken by the defendants to collect taxes of the complainant is a spe-

cial statute for the collection of general revenue and unconstitutional and void is also reversed.

5. That so much of said decree as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the defendants from selling or attempting to sell the same under the assessment aforesaid or any part thereof for the taxes for the said years, or from in any manner interfering with or attempting to collect said taxes, is also reversed.

6. That the said defendants, W. D. Bloxham, the comptroller, &c., and John A. Pearce, as sheriff, &c., their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined and restrained from selling or attempting to sell that portion of the plaintiff's railroad from Jacksonville to Tampa and described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa under said assessment for the years 1879, 1880, and 1881 and the line from Ocala to Wildwood under said assessment for the years 1879 and 1880.

7. That the plaintiff pay the costs of this suit and be taxed by the clerk.

Ordered and decreed at Live Oak, Fla., at chambers, on
316 this the 19th day of June, A. D. 1897.

JOHN F. WHITE,
Judge 3rd Judicial Circuit of Florida.

That said decree was not filed with the clerk of the circuit court for Leon county and by him enrolled until July 5th, 1897, as appears from the file-mark and entry of said clerk thereon.

Your orator would further show that at the date of the rendition of the last-named decree, to wit, on the 19th day of June, A. D. 1897, the defendant William D. Bloxham was not comptroller of the State of Florida; that his term of office as such comptroller expired by limitation on the — day of January, A. D. 1897, and one William H. Reynolds was thereafter duly qualified and commissioned as comptroller of said State, and was at the date of the rendition of said decree and now is the legally qualified, commissioned, and acting comptroller of the State of Florida, and that there was a defect of parties to said suit when said last-mentioned decree was signed and when the same was enrolled.

Your orator further shows that all the foreclosure proceedings, judicial sales, receiverships, and transfers of the several lines of railroad and railroad property mentioned and set forth in the petitioner's original bill of complaint aforesaid were had in and under the authority of the circuit court of the United States for the northern district of Florida, and all the orders, decrees, receiver's accounts, and other papers and documents relating thereto or connected therewith were filed or recorded as a part of and among the records of said court; that before the filing of petitioner's said original bill and, to wit, on the 29th day of May, A. D. 1891, the court-house or building

in Jacksonville, Florida, where said court was held and its
317 reports kept, was, together with all of said records, files, papers, and documents, lost and destroyed by fire, and your orator was thereby deprived of much valuable information and evidence necessary in the preparation of its said bill, and was forced to rely largely on the memory of individuals of long past transactions and occurrences, hearsay, and some meagre printed reports of some of the cases made in appellate courts, all of which was in many instances indefinite, incomplete, and unreliable.

That your orator is a corporation that had no existence at the time of many of the transactions referred to and was not created till several years after the making of the assessments complained of, but was formed to own and operate the said railroad properties that had been purchased by people at a judicial sale in 1887, who were unfortunate creditors of the previous owner and who were entire strangers to the property prior to their purchase, so that your orator was not informed of the real facts, as hereinafter stated, and was not advised of their materiality nor put upon notice of the importance in value of a statement thereof as a deraignment of title by any issue raised in the pleadings, since the narrative of title in petitioner's original bill was only in explanation of the situation at the time of assessment, which justified the allegation in the bill of an entire change or ownership for value of the entire property before the date of such assessment; to which averments issue was made by defendants' answer admitting the alleged conveyances and denying, as upon demurrer to the bill, that petitioner acquired any immunity from taxation for the years 1879, 1880, and 1881.

That the supreme court decided, in effect, that the State did not have the power to follow this property for the taxes of 1879, 1880, and 1881 by assessment in 1885 if it had ceased to be in the possession and ownership of the persons to whom it belonged during
318 the time for which such assessment was made into the hands of innocent purchasers for value, and reached its conclusion that the railroad from Jacksonville to Chattahoochee river, with branches to Monticello and St. Marks, was owned and operated by Edward J. Reed and associates from September, 1879, to February, 1882, by a wholly mistaken view of the facts not in issue in the case or submitted, and upon an interpretation of the statements of the bill that is entirely at variance with the facts as they existed and the understanding and purport of such statements at the hearing below; that while said original bill, on pages 14 and 15, does allege that Edward J. Reed and associates purchased said line of road at foreclosure sale Sept. 25th, 1879, and conveyed the same Feb'y 28th, 1882, to a company organized and known as the Florida Central and Western Railroad Company, said bill is silent in its allegations as to the possession and ownership of said line of railroad during the time intervening between Sept. 25th, 1879, and February 28th, 1882; and your orator shows that since the said opinion was rendered, with the aid of its counsel, some old letters and portions of accounts have been found which have led to the discovery of what was the actual status of the possession and ownership of said

property during said interval, which before then was not known by your orator and which could not be found by it, although it exercised great diligence in the search for the actual facts to set them forth in its bill; and your orator now alleges as evidence discovered since the rendition of said opinion by said supreme court that in fact and in truth during all these years, covering the whole of the period for which these taxes are assessed and for the entire time between September, 1879 (and before), and until Feb'y 28th, 1882, a company known as the Jacksonville, Pensacola and Mobile Railroad Company owned that part of the aforesaid line of railroad between Lake City and Chattahoochee, with branches to St. Marks and
319 Monticello, and it was possessed, used, and operated by receivers of United States court, viz., Sherman Conant and A. B. Hawkins, who retained the possession of said road and received and retained the tolls and revenues thereof from September, 1879, the date of the sale alleged in the original bill, until after the said sale was confirmed by said court; that on the 10th day of February, A. D. 1882, the said H. R. Jackson, Chas. H. Symonton, and Adolph Engler, purchasers at the sale aforesaid, conveyed the said line of railroad for value to said Edward J. Reed, before which last-named date Reed and his associates were not owners of and were not possessed of said property, nor in receipt of any of its incomes, or in any way interested therein; that the portion of said road between Lake City and Jacksonville was owned and possessed and enjoyed by the Florida Central Railroad Company, its owners for many years, until the judicial sale thereof on the 6th day of January, 1882, when it was purchased by Edward J. Reed, who for the first time became possessed of the said line of railroad after the confirmation of said sale occurring thereafter within less than ten days from the date of sale aforesaid.

That said foreclosures and sales and receiverships were had in and under the authority of the circuit court of United States for the northern district of Florida, and all the records and papers of said court in said causes were destroyed by fire, as hereinbefore said, before the preparation and filing of petitioner's original bill; that Sherman Conant, one of the aforesaid receivers, had died prior to that time, and A. B. Hawkins, the other receiver, had removed from the State of Florida to the State of North Carolina; that your orator incurred great expense and labor in the preparation of its said original bill, occasioned by the destruction and loss of the court records aforesaid and the great time that has elapsed since the occurrence of many of
320 the transactions therein narrated, and exercised all due and reasonable diligence to ascertain, discover, and set forth every fact material to its case; that the aforesaid new matter was not known to your orator and by the exercise of due and reasonable diligence could not be discovered and produced at the hearing upon said original bill, and your orator again avers that it did exercise extraordinary diligence and did avail itself of all known sources of information in its efforts to obtain and set forth in its bill the actual facts of each and every the events, incidents, changes,

sales, and all other proceedings material to the full advisement of the court in and about the fair determination of the questions involved in the said controversy, and that it omitted nothing therefrom that was available to it in the exercise of such diligence.

And your orator most respectfully submits and suggests that while there was no change in the (legal) ownership and possession of the several lines of railroad acquired by the Florida Railway and Navigation Company from the time of its organization till the assessments were made, still it is charged in petitioner's bill and admitted by defendants' answer that after said property was acquired by the Florida Railway and Navigation Company, and before it was assessed for taxes for the years 1879, 1880, and 1881, and, to wit, on July 1st, 1884, and before the passage of chapter 3558, Laws of Florida, under which such assessment was made, that said company issued its bonds to the amount of $10,000,000, and that $5,000,000 of said bonds were actually disposed of to holders for value, secured by mortgage or deed of trust upon all the said lines of railroad property, and also that at the time of the formation and consolidation of the original and constituent railroad companies mentioned in said bill into the said Florida Railway and Navigation Company each and every of said several constituent companies had
321 outstanding and unpaid large amounts of bonds by them severally theretofore issued, and secured by mortgage or deeds of trust upon said several lines of railroad respectively; that upon the failure of the said Florida Railway and Navigation Company to pay a certain common-law judgment rendered against it in favor of W. B. Cutting for monies borrowed and for defaults in the payment of the interest on the underlying bonds aforesaid of the said several constituent companies, the lines of railroad of said Florida Railway and Navigation Company were, upon bills filed by said Cutting and by the several trust companies representing the holders of said bonds in the circuit court of the United States for the northern district of Florida for the foreclosure of said liens, sold under the decree and authority of said court in the year A. D. 1889, severally under their first liens and as a whole under the lien of the mortgage created by the Florida Railway and Navigation Company, as aforesaid, and that W. B. Cutting, as agent, bought the said property and conveyed it to your orator's company, which he and his associates had organized for that purpose, and that your orator is no otherwise whatever the successor of said Florida Railway and Navigation Company, and it holds its property by virtue of liens created long prior to the assessment made under chapter 3558, Laws of Florida.

And your petitioner respectfully submits that under undisputed facts your orator occupies the legal position and attitude of a *bona fide* purchaser for value of the whole of said property at the date of the execution of said several mortgages or deeds of trust, and that at said several dates the State had made no assessments and had taken no steps whatever to collect the said taxes, and that no taxing statute had affixed any lien upon said property, and that at the date when said consolidated bond issue was made under which the system as a whole was sold the time for the

assessment and collection of taxes for the years 1879, 1880, and
322 1881 had passed, and that chapter 3558, under which the assessment was subsequently made, was not enacted until February 12th, 1885, and, having acquired its said property by purchase at the judicial sales aforesaid, your petitioner respectfully submits that it stands in the attitude of a *bona fide* purchaser of said property for value as of the dates of the said several liens securing the bond issues aforesaid, and should have been so adjudged by the court and decreed to hold the same *except* from the payment of the taxes as assessed for the years 1879, 1880, and 1881, and your orator suggests and assigns the failure of the court so to decree as error in law, apparent upon the face of said decree, for which the same should be reviewed and reversed. Your orator further shows that the decree rendered by the judge of the 3rd judicial circuit on June 19th, 1897, as a final decree is informal and imperfect and within itself unintelligible, as it can only be read in connection with and by reference to the decree of November 25th, 1893; that it was rendered for and against W. D. Bloxham, as comptroller, who was not at that time comptroller of the State of Florida, and there were no proper parties to said cause at the date of the rendition of said decree.

And your orator respectfully insists that the aforesaid final decree entered as herein aforesaid ought to be reviewed, revised, and set aside for the many errors in law and imperfections apparent in the body of said decree, as hereinbefore set forth, and that your orator ought to be decreed to be an innocent and *bona fide* purchaser for value of all its railroad property mentioned and described in its said original bill as of a date when the same had not been assessed for taxes for the years 1879, 1880, and 1881, and when the same could not have been so assessed under any law then in force in the State of Florida, and that all
of said railroad property in the hands of your orator
323 ought to be decreed to be exempt from and not subject and liable to the taxes so assessed against it, as herein aforesaid, for the years 1879, 1880, and 1881; and your orator is advised and insists that under the aforesaid circumstances the said last-mentioned final decree, in consequence of the discovery of such new matter aforesaid, ought specially to be reviewed in so far as the same declares your orator's line of railroad from Jacksonville to Chattahoochee, with branches to St. Marks and Monticello, subject and liable to the payment of the taxes so assessed against it for the years A. D. 1879, 1880, and 1881, and that the first decree rendered on November 25th, 1893, in said cause by his honor John F. White, judge of the 3rd judicial circuit of Florida, in so far as it declares the railroad property of your orator exempt from and not subject to the payment of the taxes assessed against it for the years 1879, 1880, and 1881, and in so far as it enjoins and restrains the defendants from selling or attempting to sell the same for the payment of such taxes, ought to stand and be established and confirmed; and for effectuating the same the said several proceedings, which became abated as to the former defendant, William D. Bloxham, by the expiration of his term

of office as comptroller of the State of Florida, should stand and be reviewed against his successor, the said William H. Reynolds, as comptroller of said State. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereinafter prayed and may answer all and singular the allegations of this bill as if particularly interrogated thereto:

Your orator prays that the said suit may be reviewed against the said William H. Reynolds, as comptroller of the State of Florida, and that the said final decree herein aforesaid and all proceedings thereon may be reviewed, revised, and set aside, and that
324 each and every the assessments made by William D. Barnes, late comptroller of the State of Florida, for State or county purposes, on the lines of road and railroad property of your orator for either and each of the years of 1879, 1880, and 1881 be decreed to be illegal and void, and that the said lines of railroad and railroad property in the hands of your orator be declared to be exempt from and not subject or liable to the payment of such taxes; and may it please your honor to grant unto your orator the injunction of this court, directed to the defendants, William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, State of Florida, restraining them and each of them from making any levy or sale or attempting the same on the property of the lines of your orator's railroad on account of any of the assessments for taxes made thereon for the said years 1879, 1880, and 1881, and from executing or attempting to execute any warrants of sale issued on said assessments or either of them, and restraining the said William H. Reynolds from hereafter making any further assessments upon the lines of railroad property of your orator for taxes for the years 1879, 1880, and 1881, and for such other and further and general relief as the nature of the circumstances of this cause may require.

And may it please your honor to grant unto your orator the State's writ of subpœna to be directed to the said defendants, William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, State of Florida, commanding them and each of them on a day therein to be named to appear before this court and make full answer under oath to all and singular the premises and to abide the further order and decree of the court herein.

[SEAL.] THE FLORIDA CENTRAL AND PENINSULAR RAILROAD CO.,
By H. R. DUVAL, *President.*

Attest: E. R. HOADLEY, *Secretary.*

JOHN A. HENDERSON,
J. S. WHITE,
T. L. CLARKE,
Solic's and Coun'l for Complainants.

325 STATE, COUNTY, AND CITY OF NEW YORK:

Before me, John D. Miller, Jr., commissioner of deeds for the State of Florida in and for the State of New York, personally appeared H. Rieman Duval, to me well known, who, being duly sworn, says that he is president of the Florida Central and Peninsular Railroad Company and has continuously been the president of said company since the date of its organization; that he has carefully read the foregoing bill of complaint, and that all the facts therein set forth as of complainant's own knowledge are true, and those stated upon information derived from others he believes to be true; that the new matter set up in the said bill as a basis for filing a bill of review was not known to complainant at the date of the hearing upon the original bill therein mentioned, and by the use of reasonable diligence could not have been known or produced at said hearing, and the same has first come to the knowledge of complainant since the said hearing, and that all the statements therein made as to the time, manner, and circumstances of the discovery of said new matter and the difficulties attendant upon such discovery are true as stated in the said petition; that said bill is not filed for the purpose of vexation or delay, and affiant verily believes that the ends of justice and fair dealing require the granting of the prayer of said bill.

[SEAL.] H. RIEMAN DUVAL, *President.*

Sworn to and subscribed before me this 7th day of September, A. D. 1897.

JOHN D. MILLER, JR.,
Commissioner of Deeds for the State of Florida in and for the State of New York.

326 On the 5th day of September, 1898, defendants filed the following answer to complainant's bill of review:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Plaintiff,
vs.
WILLIAM H. REYNOLDS, as Comptroller of Florida, and John A. Pearce, as Sheriff of Leon County, Florida, Defendants.

The joint and several answer of William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, to the bill of review of the Florida Central and Peninsular Railroad Company.

These defendants, now and at all times hereafter, saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said plaintiff's bill of re-

view contained, and for answer thereunto or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, saith:

1. That they admit to be true the recital in the said bill of review of the previous proceedings in this suit, as evidenced by transcripts from the record thereof attached to said bill as exhibits.

2. That they have no knowledge that the records of the
327 circuit court of the United States for the northern district of Florida were destroyed by fire, as alleged in said bill, and will neither admit nor deny the same, but will demand that plaintiff make proof if material to its relief.

3. That they deny that the Jacksonville, Pensacola and Mobile Railroad Company owned the line of railroad from Lake City to Chattahoochee, with branches from Tallahassee to St. Marks and Drifton to Monticello, *between* September, 1879, and until February 28th, 1882, and allege upon information and belief that Adolph Engler, Henry R. Jackson, and Charles H. Simonton, trustees for J. F. Schutte and others, owned said railroad and branches from September 25th, 1879, until February 4th, 1882, and Edward J. Reed owned it from that date until March 4th, 1882, when he transferred it to the Florida Central and Western Railroad Company.

4. That they have no knowledge that Sherman Conant and A. B. Hawkins, as receivers of the United States circuit court, possessed, used, and operated said railroad branches and received and retained the tolls and revenues thereof from September, 1879, until after the sale was confirmed by the court, and will neither admit nor deny the same, but demand that plaintiff make proof thereof if material to its relief.

5. That they deny that H. R. Jackson, Charles H. Simonton, and Adolph Engler conveyed said line of railroad to Edward J. Reed on the 10th day of February, A. D. 1882, for value, and that Edward J. Reed and his associates were not owners of and not possessed of said property nor in any way interested therein prior to that date, and allege upon information and belief that Adolph Engler, Henry R. Jackson, and Charles H. Simonton, trustees for J. Fred Schutte and others, transferred said line of railroad and branches to Edward J.
Reed, without a valuable consideration therefor, on the 4th
328 day of February, 1882, and afterwards, on the 4th day of March, 1882, Edward J. Reed transferred said railroad and branches to the Florida Central and Western Railroad Company without a valuable consideration therefor, and that both of said last-mentioned transfers of said railroad and branches were voluntary and without any valuable consideration therefor.

6. That they admit that it is true that Edward J. Reed purchased the line of railroad from Lake City to Jacksonville at a judicial sale on the 6th day of January, A. D. 1882, but have no knowledge that the Florida Central Railroad Company owned and possessed the said railroad for many years until the judicial sale thereof on the 6th of January, 1882, or that Edward J. Reed for the first time became possessed of said line of railroad after the confirmation of said

sale, as alleged in said bill, and will neither admit nor deny the same, but demand that the plaintiff make proof thereof if material to its relief.

7. That they deny that the new matters alleged in the bill of review were not known to the plaintiff or by the exercise of due and reasonable diligence could not have been discovered and produced at the hearing on the original bill.

And these defendants admit to this honorable court that all and every the new matters in the said plaintiff's bill of review mentioned are irrelevant, immaterial, and insufficient to cause a reversal of the final decree in said bill complained of, and these defendants hope they shall have the same benefit of this defense as if they had demurred to the plaintiff's said bill of review.

And these defendants deny that there is any other matter, cause, or thing in the plaintiff's said bill of review contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants.

329 All which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. B. LAMAR,
Solicitor for Defendants.

STATE OF FLORIDA, }
Leon County. }

Before the undersigned officer personally appeared William H. Reynolds, comptroller of the State of Florida, and John A. Pearce, sheriff of Leon county, who, being each duly sworn, deposes and says that the allegations contained in the foregoing answer are true, except as to those matters stated on information and belief, and these they believe to be true.

WM. H. REYNOLDS,
Comptroller.
JOHN A PEARCE,
Sheriff Leon County.

Sworn to and subscribed before me this 5th day of September, A. D. 1898.

W. M. McINTOSH,
[SEAL.] *Notary Public, State at Large.*

STATE OF FLORIDA, }
Leon County. }

Personally appeared before the undersigned officer William H. Reynolds, comptroller of the State of Florida, and John A. Pearce, sheriff of Leon county, who (after the amendment being made in

this answer by inserting on page three, line five (5) thereof,
330 the words "on the 10th day of February, A. D. 1882," after the name of Edward J. Reed), being duly sworn, deposes and says that the allegations contained in the foregoing answer are true, except as to those matters stated on information and belief, and these they believe to be true.

WM. H. REYNOLDS,
Comptroller.
JOHN A. PEARCE,
Sheriff of Leon County.

Sworn to and subscribed before me this 16th day of September, A. D. 1898.
[SEAL.]

W. M. McINTOSH,
Notary Public, State at Large.

On the 3rd day of October, 1898, the complainant filed its replication to defendants' answer to bill of review as follows:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Plaintiff,
vs.
WILLIAM H. REYNOLDS, as Comptroller of Florida, and JOHN A. Pearce, as Sheriff of Leon County, Florida, Defendants.

The Replication of the Plaintiff to the Joint and Several Answer of the Defendants.

This repliant, saving and reserving to itself all and all
331 manner of the advantage of exception to the manifold insufficiencies of the said answer, for replication thereto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY,
By J. S. WHITE &
T. L. CLARKE, *Its Solicitors.*

J. S. WHITE &
T. L. CLARKE.
Solicitors and of Counsel for Complainant.

On the 9th day of March, 1899, the following order re-establishing lost papers and appointing examiners to take testimony in this case was made and entered by the court:

In the Circuit Court of Second Judicial Circuit of Florida in and for Leon County. In Chancery.

332 THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY
vs.
WM. H. REYNOLDS, Comptroller of the State of Florida, and JOHN A. PEARCE, Sheriff of Leon County.

This day this cause came on to be heard, at Live Oak, Fla., before the judge of the third judicial circuit of Florida, the judge of the second judicial circuit being disqualified herein, T. L. Clarke appearing as counsel for complainant and W. B. Lamar, attorney general of Florida, for defendants; and it appearing from the representations of said counsel for complainant and defendants that the notice given by complainant to defendants Sept. 8th, 1897, of its application to the court for leave to file a bill of review, the original petition praying for leave to file a bill of review in this cause, filed herein on the 13th day of September, A. D. 1897; the order made on the same day granting leave to file a bill of review, the bill of review filed in pursuance thereof on the 18th day of September, A. D. 1897, the præcipe of appearance of the defendants, filed October the 4th, 1897, and the demurrer of the defendants to said bill, filed November the 1st, 1897, have all been lost or mislaid and after diligent search cannot be found, and the counsel aforesaid having produced before the court a copy of said several original papers as certified by Council A. Bryan, clerk of the circuit court for Leon county, Florida, and consenting that the same be established as a part of the record of this cause in lieu of said lost originals; therefore, upon consideration thereof,

It is considered, ordered, and decreed that the said copy of
333 notice of application for leave to file a bill of review, the copy of petition for leave to file a bill of review in this cause, the copy of the order granting leave to file such bill, the copy of the bill of review filed in pursuance thereof, the copy of the præcipe of appearance of defendants, and a copy of the demurrer of defendants to said bill as certified by Council A. Bryan, clerk of the circuit court for Leon county, Florida, on the 21st day of March, A. D. 1898, and certified by B. B. Wilson, clerk of the supreme court, as a true copy of the transcript of record filed in said court March 22nd, 1898, all herewith filed and hereto attached, be, and they are hereby, established as and made a part of the record in this cause to supply the place of said several original papers so lost or mislaid, and that in all further proceedings in this cause they have all the force and effect of the said several originals.

And it is further ordered that the time for the taking of testimony in this cause be, and the same is hereby, extended until the

15th day of April, A. D. 1899, and that John E. Hartridge, of Jacksonville, Fla., and John D. Miller, of New York city, be, and they are hereby, severally appointed in their respective cities examiners in this cause, and as such examiners they and each of them are severally authorized and required to take and report in writing to the court the testimony of such witnesses and to receive and file such documentary evidence as may be produced and offered before them or either of them at their respective places of business by counsel for either party to this cause after ten days' notice to the opposite party.

Done and ordered at Live Oak, Florida, at chambers, on this the ninth (9) day of March, A. D. 1899.

JNO. F. WHITE,
Judge 3rd Judicial Circuit.

334 At the hearing of said cause plaintiff offered and read in evidence the following written depositions of A. B. HAWKINS, taken upon commission in its behalf:

1. State your full name and residence.

To the first direct interrogatory the witness says:

That his name is Alexander B. Hawkins, and that he resides in Raleigh, North Carolina.

2. Where did you reside during the years '79, '80, and '81? If you say you resided in Florida, state whether you held any position by appointment of the United States circuit court for the northern district of Florida. If you say you were a receiver of said court, state the title of the cause or causes in which you were receiver, and the nature and extent of your receivership.

2. To the second interrogatory the witness says:

I resided during the years 1879, 1880, and 1881 in Tallahassee, Florida. I held an appointment as receiver of the J., P. & M. Railroad Company by appointment of the United States circuit court for the northern district of Florida during the years aforesaid. I was receiver in the cause of J. Fred Schutte *et al. vs.* The J., P. & M. Railroad Co. and its ancilliary suits. That receivership covered lines of railroad from Chattahoochee to Lake City, and from Tallahassee to St. Marks, and from Drifton to Monticello, Florida, and the suit was instituted for the foreclosure of the liens of certain bonds of Florida on the lines of railroad aforesaid.

3. If you say you were receiver by appointment of said court in the cause of J. Fred Schutte *et al. vs.* The J., P. & M. R. R. and its ancillary suits, and that the suits were instituted for the foreclosure of liens of certain bonds of Florida on the lines of railroad, state what the lines of road were, and state what your authority as receiver was.

335 To the third interrogatory the witness says:

That the receivership covered the lines of railroad aforesaid. My authority was as receiver to take charge of and operate the roads and account to the court for the proceeds.

4. If you say that as such receiver you were in charge of the

operation of the lines of railroad embraced in said litigation or any part thereof, state whether you were a sole receiver or a co-receiver, and, if a co-receiver, who your associate receiver was and where he now is. State how long as such receiver you were in the possession of and in control of the operations of said railroad or any part thereof. Who was in receipt of the earnings and revenues of said railroad? If you state that you, as receiver, were, state what, if any, connection plaintiffs had with these earnings.

To the fourth interrogatory the witness says:

I was a receiver with Major Sherman Conant, who is now dead. As such receivers we were in possession of and in control of the operations of said railroad for over four years; that as receivers we were in receipt of the earnings and revenues of said road. The plaintiffs in this suit had no connection whatever with any of these earnings.

5. Were there any net earnings from the operation of said railroad? If there were any net earnings, how were the earnings expended? If you say they were expended in the operation of the railroad, and that part lying west of Lake City, state how long you were in receipt of such earnings and whether or not you continued to be in receipt of such revenues and to who and when you turned over possession, control, and ownership of said railroad. Did Henry R. Jackson, Charles H. Simonton, and Adolph Engler, as trustees or in any capacity, have any control, possession, use, occupation, enjoyment, or other interest in the management of the whole of
336 that railroad embraced in that litigation or any part thereof during any of the time between the time of the judicial sale of September, '79, up to and including the 1st of Februrary, 1882? If so, what was their enjoyment of it? If you say they had no connection with it in the manner aforesaid or otherwise during all this time, state who were such managers and in such control and who were the beneficiaries from the operation of said property.

To the fifth interrogatory the witness says:

There were net earnings from the operation of said railroad which were expended in the operation and repairs of the said road. We were in receipt of the earnings and revenues of said railroad for over four years, and we turned over the possession, control, and ownership of said railroad to the purchasers of the same some time in the early part of 1882. The purchasers were Henry R. Jackson, Charles H. Simonton, and Adolph Engler. Said Henry R. Jackson, Charles H. Simonton, and Adolph Engler, neither as trustees or in any other capacity, had any control, possession, use, occupation, enjoyment, or other interest in the management of the whole of that railroad embraced in said litigation, or any part thereof, during any of the time between the time of the judicial sale in September, 1879, up to and including the 1st of February, 1882. The receivers during all this time had entire control and management of said road. The net proceeds, after paying the operating expenses, were paid into the registry of the court.

6. Did you know one Edward J. Reed? If so, who was he; where did he live; where did you first become acquainted with him?

To the sixth interrogatory the witness says:

I knew one Edward J. Reed. He was an Englishman and lived in England. I first became acquainted with him in Jacksonville, Florida, in the latter part of 1881 or the early part of 1882.

7. Who made the sales of said railroad, and at what price? How was the consideration payable? If you say the consideration was payable in bonds and money, state in what proportion; and if there be any distinction in the bonds growing out of the numbers, state the difference in the declared liens as controlled by the numbers.

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To the seventh interrogatory the witness says:

We, as receivers, made the sale of said railroad. I do not remember the exact price, but the consideration was payable partly in bonds and partly in money. I do not remember what proportion nor do I remember any distinction in bonds growing out of the numbers or the difference in declared liens as controlled by the numbers.

8. Where are the records of all the court proceedings covering the litigation effecting the enforcement of the liens upon the lines of road which you operated? Where were they kept and what was their volume, approximately? If you say they were destroyed by fire, state when and where, and state whether the destruction of the records and other proceedings of the court by the fire was a total or partial destruction; and particularly state, if you know, what was the extent of the loss or injury of the court proceedings, decrees, records, files, and all papers relating to the enforcement of those suits. Was it not total? State whether or not those records have ever been re-established.

To the eighth interrogatory the witness says:

All the records of the court proceedings covering the litigation effecting the enforcement of the liens upon the lines of road which we as receivers operated were burned in Jacksonville at the destruction of the building used as a court-house. This fire occurred about the year 1891, and there was a total destruction and loss of all the court proceedings, decrees, records, files, and all papers relating to the enforcement of these suits. All these records were kept in the building used as a court-house. It was a very voluminous record, embracing thousands of pages, which records have never been re-established.

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The written interrogatories having been propounded and answered, the solicitor for plaintiff propounded the following additional interrogatories orally under the statute:

Q. Will you state, if you know, with what lines of road the lines from Jacksonville to Chattahoochee river are now incorporated and with what organization they are operated?

A. The lines are now incorporated with the line from Fernandina to Cedar Keys, known as the Florida railroad; the line from Waldo to Ocala, then known as the Peninsular railroad; the line from Ocala to Wildwood, then known as the Tropical railroad, and the line from Jacksonville to Fernandina, known as the Jacksonville

and Fernandina railroad, and they are now all operated as the Florida Central and Peninsular railroad.

Q. At the time of said sale and payments about which you have testified, by whom were those several lines owned and operated?

A. They were owned by their several respective companies and were operated by Mr. David L. Yulee.

Q. Was there any connection between this plaintiff, The Florida Central and Peninsular Railroad Company, and the other companies mentioned and the Florida Central and Western Railroad Company?

A. There was no connection. The Florida Central and Peninsular Railroad Company was not then organized, nor was the Florida Central and Western railroad then organized, and the other roads mentioned, controlled by Mr. Yulee, were independent and had no connection whatever with this.

ALEXANDER B. HAWKINS.

339 Sworn to and subscribed before me this 30th day of March, 1899.

FRANK P. HAYWOOD, JR.,
Notary Public. [SEAL.]

Cross-interrogatories.

1st cross-int. If, in answer to direct interrogatories numbered 2, 3, and 4, you state that you were appointed by the United States circuit court for the northern district of Florida a receiver in the suit of J. Fred Schutte *et al. vs.* The Jacksonville, Pensacola and Mobile Railroad Company *et al.*, and that one Sherman Conant was also appointed a receiver therein, then answer whether you and the said Sherman Conant or either of you retained an attorney or attorneys at law to counsel and advise you touching your duties as such receivers and the control and management of the property of which you took possession under and by virtue of your authority as such receivers.

To the first cross-interrogatory witness says:

As receivers, we had attorneys.

2nd cross-int. If to the preceding interrogatory you answer yea, then state the name and residence of the attorney or attorneys who you retained and the length of time he or they continued in your employment as receivers, as aforesaid.

To the 2nd cross-int. witness says:

The names of the attorneys were John A. Henderson, Tallahassee, Florida, and Leroy D. Ball, Tallahassee, Florida. They continued in our employ during our receivership.

3rd cross-int. If, in answer to direct interrogatory number 5, you state that Henry R. Jackson, Charles H. Simonton, and Adolph Engler, as trustees or otherwise, had no control, possession,
340 use, occupation, enjoyment, or other interest in the line of railroad from Jacksonville to Chattahoochee river, with branches to St. Marks and Monticello, or any part thereof during any of the time between the judicial sale, in September, 1879, and

the first day of February, 1882, then answer whether your said attorney or attorneys had knowledge thereof.

To the third cross-interrogatory witness says:

I do not know whether our said attorneys or either of them had any knowledge or information of the fact that Henry R. Jackson, Charles H. Simonton, and Adolph Engler, as trustees or otherwise, had no control, possession, use, occupation, management, or other interest in the lines of road for which we were receivers during the time of our receivership.

4th cross-int. If, in answer to direct interrogatory numbered 5, you state that you and Sherman Conant, as receivers, as aforesaid, were in the possession, management, and control of the line of railroad from Lake City to Chattahoochee river, with branches to St. Marks and Monticello, and received the tolls, revenues, and earnings derived therefrom between the time of the judicial sale of said line of railroad in September, 1879, and the first of February, 1882, then answer whether your said attorney or attorneys had knowledge thereof.

To the fourth cross-interrogatory witness says:

To the best of my knowledge and belief, neither one of the attorneys, Henderson and Ball, knew anything about what disposition the receivers, Hawkins and Conant, made of any of the earnings of said railroad, and that the said attorneys had nothing whatever to do with the management of the road or the receipts of the revenues, nor were they ever consulted about it.

5th cross-int. If, in answer to direct interrogatory numbered
341 7, you state that you and Sherman Conant sold the railroad therein inquired about, then answer whether your said attorney or attorneys had knowledge of such sale.

To the fifth cross-interrogatory witness says:

Our attorneys had a general knowledge of the sale of the railroad, as other well-informed people in Florida did.

6th cross-int. Did you and Sherman Conant, as receivers as aforesaid, at any time make return to the comptroller of the State of Florida of the railroads which were in your possession and under your management and control for the purpose of having the same assessed for taxation by such comptroller?

To the sixth cross-interrogatory witness says:

As receivers of the said roads we did not at any time make return of the same to the comptroller of the State of Florida for the purpose of having the same assessed for taxation by said comptroller, nor was any such return required of us or asked for by said comptroller.

ALEXANDER B. HAWKINS.

Subscribed and sworn before me this 30th day of March, 1899.

FRANK P. HAYWOOD, JR.,
Notary Public. [SEAL.]

Complainant offered and read in evidence the following written depositions of PHILIP WALTER, taken upon commission in its behalf:

1. Give your full name and residence.

To the first interrogatory the witness saith that his name is Philip Walter, and that he resides in Jacksonville, Florida.

2. Were you at any time—and, if so, when—an officer of the
342 circuit court of the United States for the northern district of Florida, and for what period and what official?

To the second interrogatory the witness saith: I was clerk of the circuit and district courts of the United States for the northern district of Florida from, I think, 1873 to 1894.

3. Was there ever at any time—and, if so, when—a destruction of the records, minutes, papers, documents, and files of the circuit court of the United States for the northern district of Florida? If so, when was there such destruction and by what element, and what was the nature and extent of the destruction?

To the third interrogatory the witness saith that there was a destruction by fire of all of the records, papers, and files of the United States district and circuit courts on the night of May 18 or early morning of May 19, 1891. There was not a thing saved.

4. If you say you were clerk of such court and there was such destruction, state whether or not you were familiar with the records, minutes, and court proceedings in a certain cause pending therein, known as the case of J. Fred Schutte *et al. vs.* J., P. & M. R. R. Co., and the ancillary suits there-.

To the fourth interrogatory the witness saith that there were on file papers in a suit known as that of J. Fred Schutte *et al. vs.* J., P. & M. R. R. Company and ancillary suits thereto pending at the time of the destruction of said records, and I was familiar with the records therein.

5. What was the object and purposes of such suits? What was the nature and volume of the record of all such proceedings as pertained to the enforcement of liens, Florida State bonds, upon lines of railroad embraced in said suit?

To the fifth interrogatory the witness saith that the purpose
343 of the suits was a foreclosure of a mortgage for the benefit of the bonds of the State of Florida. I think the record was the largest one we ever had in the court. There were several thousand pages of printed matter after it was printed. There were embraced in the suit the old Florida Central railroad, from Jacksonville to Lake City; the Jacksonville, Pensacola & Mobile road, from Lake City to Chattahoochee river, and branches to Monticello and St. Marks.

6. Was there a partial or total destruction of all such records, decrees, proceedings, minutes, papers, and files of such case? Has there ever been any proceeding taken to re-establish any of the lost papers in said case?

To the sixth interrogatory the witness saith: The destruction was total. All of the books, files, records, papers, minutes, and every-

thing were destroyed. No proceeding was taken to re-establish the lost papers in said case.

7. Who operated the whole or any part of the line of railroad from Jacksonville to Chattahoochee river, with its branches to Monticello and St. Marks, after the sale of any of said property and prior to the 28th day of February, 1882? If you say that that part of the lines between Lake City and Chattahoochee was operated during that interval by Sherman Conant and A. B. Hawkins as receivers, state who was in receipt of the revenues and incomes from such property, and how you know it. If you say that that part of the line between Jacksonville and Lake City was operated by the Florida Central Railroad Company, or anybody for it, for the whole or any part of it, state who was in receipt of the rents, issues, and profits from the operation of such road.

7. To the seventh interrogatory the witness saith: A. B. Hawkins and Sherman Conant, as receivers, operated the road from
344 Lake City to Chattahoochee river. From Jacksonville to Lake City I think part of the time the road was operated by the Florida Central Railroad Company and part of the time by Mr. E. M. L'Engle. I suppose the Florida Central Railroad Company would cover it all. The revenues and incomes were deposited with the officers of the court. I know that from the returns, as I was master and passed on all of their accounts and vouchers. From Jacksonville to Lake City I suppose Mr. E. M. L'Engle was in receipt of them for the Florida Central Railroad Company.

8. If any of the accounts or earnings of those roads were kept in your office as clerk of the court from reports made by any court official, state what they were and state whether any of the earnings thereof accrued for the benefit of the complainants in that suit or anybody representing them.

To the eighth interrogatory the witness saith: All of the accounts were kept in my office. They were filed monthly, and every dollar paid out and every dollar received passed upon by me as master and then filed in the case by me as clerk, and everything was there up to the burning of the records—monthly accounts, with every voucher with them. The earnings of the road were used in the maintenance and operation and betterments of the roads by the receivers under the orders of the court. The earnings were not sufficient to pay for the obligations incurred by the receivers.

9. What was the consideration paid fo the purchase at judicial sale or sales, giving the date of the sale or sales, for the whole of said line of railroad and for the integral parts if they were separate sales? Was it not bonds and money; and, if so, what sort of bonds and how many of them were paid in on account of the whole road or the separate parts, and how much money in either case? Who paid such consideration? If you say they were Florida State bonds and money, state who surrendered the possession of the bonds
345 under the sale and to whom such payments were made, and likewa*ys* state to whom and by whom the money was paid.

To the ninth interrogatory the witness saith: The consideration was part money and part bonds of the road; but I do not know at this

late day as I could say exactly how much was in money. The purchase-money was paid in bonds of the State of Florida on the line from Lake City to Chattahoochee of $1,000 each, numbered from 1 to 2808, except that a small portion of said bonds, their prorated share of the $50,000 bid at the sale of that line, was paid into the registry of the court for the retirement of the bonds, and all like bonds for of like denomination on the line from Jacksonville to Lake City, bonds numbered from 3,000 upwards, 306 on which were declared liens, nearly all were put in and a small portion paid in cash for their final retirement. Some others were taken on accounts of claims not required to be liquidated. These payments were made for and on account of Jackson, Simonton, & Engler, trustees, and for Sir Edward J. Reed, who, on or about the date named, on or about the first of January, 1882, became the purchaser at the judicial sale of the Florida Central railroad, and under the terms of his decree he and they bought for the organization of the corporation and owned and operated the entire line afterward known as the Florida Central & Western. The judicial sale or sales of the line from Lake City to Chattahoochee river had been made a long while prior to this, but the purchasers had not been put in possession because of delays caused by appeals to the Supreme Court of the United States and other reasons. The parties above named surrendered possession of the bonds and the proportionate share of the money.

10. Where is Sherman Conant and where does A. B. Hawkins now reside?

To the tenth interrogatory the witness saith that A. B.
346 Hawkins resides in Raleigh, N. C., I think. Sherman Conant is deceased. He died about eight years ago.

The written interrogatories having been propounded and answered, solicitor for complainant propounded the following additional interrogatories, orally, under the statute:

Q. Will you state, if you know, with what line of roads those lines from Jacksonville to Chattahoochee river are now incorporated, with what organization they are operated?

A. The lines are now incorporated with the old Florida railroad from Fernandina to Cedar Keys, the Peninsular railroad from Waldo to Ocala, the Tropical railroad from Ocala to Wildwood, and the Jacksonville & Fernandina railroad, and all are operated now as the Florida Central & Peninsular railroad.

Q. At the time of said sale and payments about which you have testified, by whom were those lines owned and operated?

A. The- were owned by their respective companies and operated by Mr. Yulee.

Q. Was there any connection between this Florida Central Railroad Company and the other companies mentioned and the Florida Central & Western?

A. There could not have been any connection, as the Florida Central & Western was not organized then and the others were independent roads.

PHILIP WALTER.

Complainant introduced and read in evidence the following depositions of H. R. Duval:

H. RIEMAN DUVAL, of the city of New York aforesaid, being sworn, deposes and says:

347 (Witness is examined orally by counsel for plaintiff.)

My name is H. Rieman Duval, and my residence is New York city. I am the president of the complainant railroad company in this cause. I have been its president since its organization, to wit, the year 1889. Prior thereto I was the receiver of the Florida Railway & Navigation Company, under appointment of the justice of the Supreme Court of the United States for the fifth circuit of the State of Florida. I was appointed receiver in various suits pending in said circuit court. The appointment was made the 26th day of October, 1885. The complainant company obtained the property of the said Florida Railway & Navigation Company through the foreclosure of many liens thereon, and was the company organized for the gathering in of the several lines which made up the consolidated Florida Railway & Navigation Company's lines, and is now, with some addition, the line of the Florida Central & Peninsular Railroad Company. My first acquaintance with this property began in the summer of 1885. Prior thereto I had only a general knowledge of the affairs of the company. Some personal friends of mine, notably the Messrs. W. Bayard and R. Fulton Cutting, had become creditors of the Florida Railway & Navigation Company, and as such holding largely as collateral the bonds of the last-named company and its constituent companies. The road was depleted and financially ruined. Its then owners were bankrupt and those in possession of its property and in control of its revenues and receipts were without financial ability to pay interest on the indebtedness, or even to maintain the property with and degree of safety. The proceedings under which I was appointed receiver were instituted for the purpose of foreclosing these liens. Various causes contributed to the extension of these suits over the period of four years from my appointment to the complete reorganization of the properties by the purchasers at the judicial sale which followed
348 and all of which took place in 1888 and 1889. These delays were occasioned by the necessity which I was under of having to rehabilitate the property and put it into a safe condition as a going concern by the issue of a large amount of receiver's certificates under the authority of the court. There was nobody within all of my acquaintance or of whom I am advised who was an owner of the property in the years 1879, 1880, and 1881, or in either of those years, who continued to be an owner after I became receiver, nor do I think that there were any such people who were such owners after the organization of the Florida Central & Western Railroad Company in January, 1882, and of its subsequent consolidation into the Florida Railway & Navigation Company by the purchase and control of the other lines, to wit, the Florida Transit & Peninsular Railroad Company and the Peninsular Railroad Company. My appointment

as receiver and the necessity under which the creditors in the suits wherein the receivers were appointed to vigorously press for a better security for their money in the property and divers other causes left those people and myself without particular information as to the earlier history of the road and without access or control of the various records, minutes, and proceedings of the several corporations. We, and I mean by this myself and others who owned and controlled the property in 1889 and those who owned and controlled the property after 1882, were without any particular information as to the ownership of any of the property indicated prior to that date. In a general way I might say specifically that I knew that the Florida Transit & Peninsular and the Peninsular Railroad Companies were largely the property of Mr. Yulee and Mr. Dickerson and their associates, who, by the sale to Henning and Willard, became interested in these properties, if at all, only as creditors after the organization of the Florida Railway & Navigation Company and prior to the organization of this complainant. I have no hesi-
349 tation in saying that there was an entire change of ownership of all these properties from those who owned them and controlled them and were in possession of the receipts and revenues during the years 1879, 1880, and 1881, at the time of the assessment made for taxes on these properties in 1885, and that such sales and transfers had been for valuable considerations and were made in good faith. The subsequent connection of Yulee and Dickerson with this complainant's property as stockholders grew out of the exchange of stock with them for certain underlying bonds held on some of those roads and not otherwise. Neither myself nor any of my associates with whom I could have conferred were familiar with the history of these matters and could not in the exercise of ordinary care and diligence have ascertained the facts as set out in the bill of review filed in this case, and it was only by the accidents as stated therein that the same came to our knowledge. At the time of this testifying I am without interest in the property of the complainant or pecuniar-y concerned as to the result of this suit except as to the meagre amount of five shares of filed common stock necessary to qualify me as a director and official.

I reaffirm my affidavit and jurat attached to the several bills in this cause as made by me, and say again, as I then said, that the statements therein made are true to my own knowledge except so far as they are stated upon information and belief.

H. RIEMAN DUVAL.

Complainant offered and read in evidence the following written depositions of ADOLPH ENGLER, taken upon commission in its behalf:

1. State your name and residence.

My name is Adolph Engler and my residence New York city.

2. Were you at any time—and, if so, when—associated with
350 Henry R. Jackson and Charles Simonton in connection with the purchase of the Jacksonville, Pensacola and Mobile rail-

road in the State of Florida? If so, where was that road situated, giving termini? In what capacity were you associated? If you say trustees, under what trust?

I was associated with Henry R. Jackson and Charles H. Simonton in connection with the purchase of the Jacksonville, Pensacola & Mobile railroad, in the State of Florida. The said road was situated in the State of Florida, and its termini were Jacksonville and River Junction on the west, with branches to Monticello and St. Marks. We were trustees under a memorandum plan for the purchase of said railroad and its reorganization.

3. Did you and your associates become the purchasers at any public sale of said railroad; and, if so, when was the sale made, and what were the terms and conditions of the purchase? Was the whole road purchased at such sale? If not, what portion of said railroad was purchased, giving its length and termini? Give the reason for the sale of only a portion of said road at that time, if such was the case.

We three above named became the purchasers of said road at a public sale thereof made by masters for the purpose of the sale, or, rather, of so much of the said road as laid between Lake City and River Junction aforesaid, being a road about one hundred and forty-nine miles and twenty-eight miles of branch road. The reason that only this portion of the road was sold was because of the decree of the court in forcing the bonds of the State of Florida, numbered from 1 to 3,000, of the nominal value of $2,808,000, only on so much of the line as was sold at the time of this purchase. That part of the road which laid between Jacksonville and Lake City, a distance of sixty miles, was decreed not to be liable for these bonds; but in that decree it was made liable for certain of these
351 bonds, numbered above three thousand. Appeals from this decree went up in both instances, but the lien upon the latter road was not enforced, I think, because of the intervention of a supersedeas bond, which prevented the sale.

4. Was the possession of the said railroad delivered to yourself and associates as such purchasers at the time of the sale, or under said sale afterwards; and, if so, when afterwards; and what was the occasion of the delay in delivery and who was in possession of said railroad, operating the same and in receipt and retention of its tolls and revenues during such interval between the date of sale and the time when you and your associates or assignees became invested with said road and the ownership and possession of the same?

The possession of the road from Lake City west was not delivered to myself and my associates named as such purchasers. The sale was some time in the year 1879, I think in August or September, but possession was not delivered to the purchasers until January, 1882. This delay in the delivery was occasioned by the litigations and appeals before referred to in my answer to a previous interrogatory. The receivers of the United States circuit court for the northern district of Florida were, during all this interval, in possession of and in the operation of said railroad, and they received and retained its tolls and revenues during the interval between the date

of the sale and the time when the Florida Central & Western Railroad Company, to whom we assigned our purchase, became vested with said road and the ownership and possession of the same. This was not earlier than January or February of 1882.

5. Were not Sherman Conant and another—and, if so, who—in possession of said railroad, and did not they operate said railroad, and were they or not receivers of some court; and, if so, what court; and were you and your associates, as purchasers at said sale, in
352 receipt of the whole or any part of the revenues and tolls of said road, and had you any control during such interval over said road?

Sherman Conant and one Alexander B. Hawkins were the receivers of the court in possession of said railroad, and they were in receipt of all of its revenues. Neither myself nor my associates, collectively or individually, received any part of the revenues or tolls of said railroad during that interval, and we had no control whatever over said road.

6. If you say that such parties were such receivers, state when they ceased to be receivers of the whole or any part of such road.

The receivers above named ceased to be the receivers of the road or any part of it in or about the month of January or February, 1882.

7. Did you and your associates, the above-named Jackson and Simonton, as trustees, or in any other capacity, make an assignment of your purchase of said road? If so, to whom and when? And if you say you made such assignment, state whether you or the assignee, and who paid the purchase-money for said railroad to the complainants or into the registry of the court for and on account of such purchase? What was such consideration? Was it a valuable consideration?

As previously answered, myself and associates, as trustees, made an assignment of our purchase in 1882 through one Sir Edward J. Reed for the purpose of conveyance to the Florida Central & Western Railroad Company, a corporation under the laws of Florida. We, as trustees or otherwise, paid no money on account of said purchase. The payment was made either by or through Reed and on account of said Florida Central & Western Railroad Company. The consideration was nearly all of the two thousand eight hundred and eight bonds of the State of Florida, numbered between 1 and 3,000,
which were declared a lien upon that particular part of said
353 railroad and the proportionate share of the bonds not paid in, as determined by the decree. The consideration thus paid was a valuable consideration.

8. Was there any delay in the delivery of the possession of said railroad under such purchase at judicial sale occasioned by any neglect, default, or influence upon the part of yourselves as purchasers or your said transferee? If so, what was the nature and occasion of such delay, and what was your purpose in the delay? Was not the delay occasioned by objections and obstacles interposed to your purchase and in hostility to the interest of J. Fred Schutte and others for whom you were trustees, and was the purchase con-

summated and possession taken at the earliest possible moment when it could be done under the law? If not, what length of time in the delay was occasioned by yourself or your associates and the interest you represented in such delay?

The delay in the delivery of possession of said railroad under the purchase and judicial sale as aforesaid was not occasioned by any neglect, default, or other influence upon the part of myself or my associates before named, as purchasers, or on the part of our transferee, but was occasioned by objections and obstacles interposed to our purchase and in hostility to the interests of J. Fred Schutte and others, the holders of the bonds declared a lien thereon, and the purchase was consummated and possession taken of the road at the very earliest possible moment when, under the law and the direction of the court, it was allowed to be done. There was no delay on our part.

—. What has become of your cotrustee, Henry R. Jackson, and what of your cotrustee Charles H. Simonton? Was either or both of these men active trustees; and, if so, which one of them?

My cotrustee Henry R. Jackson is dead, and my cotrustee Charles H. Simonton is, I am informed, still alive, but in bad health. Jackson and myself were the active trustees, and Simonton
354 was not an active trustee.

10. If you say that that part of the road between Lake City and Jacksonville was not sold at the same time of the sale of the road from Lake City to Chattahoochee and branches, state what was the occasion of such delay. If, in answer to this interrogatory, you say it was occasioned by objections made in court by obstructions interposed to the enforcement of the lien of the bonds for which you were trustee, state in what proceedings such delay was occasioned. If you say it was obstructions by the railroad company known as the Florida Central Railroad Company, state who were its officers and how long such delays continued from the date of the sale to which you refer.

As I have before answered, the part of the road between Lake City and Jacksonville was not sold at the time of the sale of the road from Lake City to Chattahoochee and the branches, and the delay was occasioned by objections in court and by obstructions interposed to the enforcement of the lien of the bonds for which we were trustees. The obstructions emanated from the Florida Central Railroad Company, a company under the laws of Florida, which was in possession of and operated so much of the road which laid between Lake City and Jacksonville. Its active, energetic, and very vigorous obstruction was made through its president, Edward M. L'Engle. Such delays continued up to some date in the month of December, 1881.

11. Who was in possession of the railroad from Lake City to Jacksonville during all this interval, and who was in receipt of its incomes and profits?

That part of the railroad between Lake City and Jacksonville was during all this interval in the possession of its company or of masters and receivers of other courts, and they were in receipt of all of

its incomes and profits, none of which ever became available
355 to the purchasers under the lien of the bonds decreed to be a lien.

12. Who was Edward J. Reed, and when did you as a trustee first become acquainted with him in connection with the completion of your purchase of the whole or any parts of these roads, and what negotiations and proceedings led up to the securing of the possession of the whole lines of railroads indicated?

Edward J. Reed was a resident of England. I first became acquainted with him in the summer of 1881 and in connection with the completion of our purchase and the acquiring of the line from Lake City to Jacksonville for the purpose of buying, owning, operating, and controlling all and every part of the line which before then was called the Jacksonville, Pensacola & Mobile railroad, to wit, the line between Lake City and Jacksonville. The litigations and proceedings in the courts had been long and expensive. Through Reed, L'Engle negotiated his retirement and surrender of the property reinforced by a sale under the decree, all of which took place and terminated after the first of December, 1881, and prior to the first of February, 1882. The consideration paid for this latter purchase came out of the people who then for the first time became interested in this property. Reed also negotiated with the owners of the balance of the line that was afterwards the Florida Railway & Navigation Company, to wit, the line between Fernandina and Cedar Keys, with the branch from Waldo to Ocala and southward. These negotiations followed the acquisition in January or February, 1882, of the railroads sold under the decrees named, and the purchasers at the sale represented by me, with their subsequent associates, became afterwards the owners of all of said railroads for valuable considerations, and prior owners ceased to be interested in the property.

13. What consideration was paid for this latter purchase and by whom?

356 The compensation and consideration paid for this latter purchase was the surrender of the bonds declared to be a lien almost entirely, and the payment in cash of the par value of the other bonds not surrendered and declared to be a lien, into the registry of the court.

AD. ENGLER.

The defendants offered and read in evidence the following written depositions of A. B. HAWKINS, taken upon the commission in their behalf:

1. State your full name and residence.

To the first interrogatory the witness saith that his full name is Alexander B. Hawkins and his residence is Raleigh, North Carolina.

2. Where did you reside during the years 1879, 1880, and 1881? If you say you resided in Florida, state whether you held any position by appointment of the United States circuit court for the northern district of Florida. If you say you were a receiver of said court,

state the title of the cause or causes in which you were a receiver and the nature and extent of your receivership, and the date of your appointment as such receiver, and whether there was a co-receiver appointed to act with you and the date of his appointment.

To the 2nd interrogatory the witness saith that during the years 1879, 1880, and 1881 he resided in Tallahassee, Florida; that he held the position of receiver of the old Jacksonville, Pensacola and Mobile R. R. Co. by appointment of the United States circuit court of the northern district of Florida; that he cannot now recollect the title of the cause in which he was appointed receiver; that he was appointed receiver in 1878 or 1879; the nature and extent of his receivership was such that he and the co-receiver had possession and control, subject to the orders of the court, of the entire prop-
357 erty and estate of said railroad company; there was a co-receiver appointed to act with witness appointed cotemporaneously with witness' appointment; his name was Sherman Conant.

3. If you say you were appointed receiver over certain lines of railroad, state over what railroads did your receivership extend and which railroads, if any, did you take possession of as such receiver.

To the third interrogatory the witness saith that his receivership extended over the railroad hereinbefore named and the road from Tallahassee to St. Marks, called the Saint Marks railroad, and the road leading from Drifton to Monticello, called the Monticello Branch railroad, and that he and said co-receiver took possession of all said railroads.

4. When did you take possession of them, and how long did you retain possession of them, and when and to whom did you relinquish possession of them?

To the fourth interrogatory the witness saith that he took possession immediately upon his appointment as receiver, the exact date he does not now remember, and retained possession of said railroads a little over four years, and relinquished possession of them to the purchaser of said roads after they had been sold under the judgments and orders of said court, the date of which he does not now remember.

5. Why did you relinquish possession of them?

To the fifth interrogatory the witness saith that he relinquished possession of said roads in obedience to the orders of said court, and not voluntarily or at his wish.

6. When did your receivership terminate?

To the sixth interrogatory the witness saith that his receivership terminated in 1881 or 1882, to the best of his recollection.

7. Who managed and operated the railroads over which your receivership extended?

358 To the seventh interrogatory the witness saith that he and Sherman Conant managed and operated the railroads over which their receivership extended.

8. Were any earnings and revenues derived from the operation thereof? If you answer yes, then state who received said earnings and revenues and what disposition was made of them.

To the eighth interrogatory the witness saith that there were earnings and revenues derived from the operation of said railroads, which earnings and revenues were received by witness and Sherman Conant, as receivers, and applied to the operating expenses of the railroads and respective debts and liabilities and obligations under the direction of said court.

9. Did you and your co-receiver retain an attorney to advise and counsel you relative to your duties and conduct as receivers or the management and operation of said railroads? If you answer yes, then name the attorney you retained.

To the ninth interrogatory the witness saith that he and his co-receiver retained and employed Le Roy D. Ball and John A. Henderson, Esquires, as counsel in all legal proceedings against said railroads for damages and the like while the said railroads were in the possession and control of said receivers and operated by them. The gentlemen named were the only attorneys employed by the receivers, and their employment was confined to matters of the character above stated.

10. Did you keep your attorneys informed of your acts and conduct in the management and operation of said railroads and your reports and settlements with the court that appointed you such receivers?

To the tenth interrogatory the witness saith that the receivers did not keep the said attorneys employed by them, as above stated, informed as to the acts and conduct of said receivers in the
359 management and operation of said railroads, nor of their reports and settlements with the court. The employment of counsel was limited to legal proceedings against said railroads for damages and the like, as before stated.

11. Did your receivership extend over separate and independent lines of railroads? If you answer yes, then state the names of said separate lines of railroad.

To the 11th interrogatory the witness saith that his receivership extended over the lines of railroads, as heretofore stated, which are all connected and under one general management, but said railroad companies had separate charters. The names of said railroad companies were the Jacksonville, Pensacola and Mobile Railroad Company, the St. Marks Railroad Company. The Monticello Branch railroad was a branch of the Jacksonville, Pensacola and Mobile railroad and had no separate charter.

12. Did you keep separate accounts of the earnings and revenues derived from each separate line of railroad? If you answer yes, then state the length of time such separate accounts were kept. Why were they kept separate? When did you begin keeping separate accounts, and when did you quit doing so?

To the 12th interrogatory the witness saith that no separate accounts of the earnings and revenues derived from the railroads in the possession of the receivers were kept by said receivers. All the roads were operated, controlled, and managed as one road, and the accounts of the receivers were kept just as though there was only one road. The receivers rendered monthly accounts to the said court.

13. Did you return these railroads to the comptroller for assessment for taxation while they were in your possession? If you answer no, then state why you omitted to do so.

360 To the thirteenth interrogatory the witness saith that he does not remember whether he and his co-receiver or either of them returned the railroads or the property of said railroad corporations to the comptroller of the State of Florida for taxation or not.

14. When were these railroads over which your receivership extended sold? Who sold them? Were they ever sold by the receivers or masters in chancery appointed for that purpose? Who purchased them at said sale? When were the purchasers let into possession of them?

To the 14th interrogatory the witness saith that the roads of which he was receiver were sold about the year 1882 by the receivers under directions of said court; that he does not remember who purchased them, but whoever did purchase them were let into possession as soon as the sales were confirmed by the court, the date of which he does not remember, but it was in 1882 to the best of his recollection.

15. Who was in possession of them during the time intervening the date of the sale and the taking possession by the purchasers? Was there any net earnings or revenues derived from the management and operation of said railroads during this period? If you answer yes, then state what disposition was made of said net earnings.

To the 15th interrogatory the witness saith that the receivers continued in possession of said railroads between the sale by them and the confirmation of such sales and the turning over of the property to the purchasers; that a great amount of revenues came into the hands of the receivers during this interval, the amount of which he does not remember. Whatever was received was turned over to the court or disbursed under its directions.

16. Was a transcript of the records of all the court proceedings covering the litigation effecting the enforcement of the liens upon the lines of road which you operated at any time printed in book form? If you answer yes, then state when it was so printed. For

361 what purpose were they so printed? Was any certificate of any kind attached to them? What was the nature of such certificate? Who made such certificate? Did you receive one of said printed transcripts? Did your attorney receive one? Was he informed of the existence of said printed transcripts?

To the 16th interrogatory the witness saith that no transcript of the record such as is inquired about in this interrogatory was ever printed, as far as this witness knows, and witness knows nothing of any of the other matters inquired of in said interrogatory.

And further the witness saith not.

A. B. HAWKINS.

The defendants offered and read in evidence the report of J. E. Hartridge, examiner, deposition of Philip Walter, and Exhibits "B," "C," and "D" attached to said report.

In the Circuit Court, Second Judicial Circuit in and for Leon County, Florida. In Chancery.

THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, Complainant,
vs.
WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida, Defendants.

Under and by virtue of an order made in this case, as
362 above, on the 9th day of March, A. D. 1899, by the Honorable John F. White, judge of the 3rd judicial circuit of the State of Florida, whereby and wherein, among other things, the undersigned was appointed examiner in this cause, and authorized and required to report in writing to the court the testimony of such witnesses as might be produced before him, and to receive and file such documentary evidence as might be produced and offered by either party to said cause, said testimony and documents to be taken on or before the 15th day of April, A. D. 1899, and said time for taking of said testimony having been continued until the 15th day of May, A. D. 1899, by order of the Honorable John F. White, dated the 26th day of April, A. D. 1899, I beg leave to report that, as examiner duly appointed by the annexed order, I did cause to appear before me Philip Walter, a witness upon the part of the defendant, and it appearing that due notice had been served upon the counsel for the complainants as required by the foregoing order, and that Philip Walter after having been duly affirmed by me to testify to the truth, the whole truth, and nothing but the truth in relation to the matters in controversy so far as the said Philip Walter should be interrogated concerning the same, the said Philip Walter was then and there examined before me by the Honorable W. B. Lamar, attorney general, as counsel for the defendants, and the questions and answers thereto taken stenographically and afterwards typed, and then read by the said Philip Walter, and thereupon the said testimony was signed and sworn to by the said Philip Walter before me, at my office, in the city of Jacksonville, on the 12th day of May, A. D. 1899.

I further certify that in the course of said examination the said Philip Walter produced, at the request of counsel, the record of the case of The Florida Central and Peninsular Railroad Company *vs.* Schutte *et al.*, and defendants' solicitor offered the same in
363 evidence, and that the same was received and filed in evidence and marked "Exhibit A," and did produce and offer in evidence certified copy of the deed from Sir Edward J. Reed to the Florida Central and Peninsular Railroad Company, dated the 4th day of March, A. D. 1882, and which was received and filed in evidence and marked "Exhibit B," and did offer in evidence the deed of the trustees of the J., P. & M. railroad to Sir Edward J. Reed, K. C. B., M. P., dated the 4th day of February, A. D. 1882, and which was received and filed in evidence and marked "Ex-

hibit C," and did offer in evidence deed from Sherman Conant and Alexander B. Hawkins, special masters in chancery, to Sir Edward J. Reed, dated the 18th day of January, A. D. 1882, and which was received and filed in evidence and marked "Exhibit D."

I further report that no counsel appeared for the complainant at the hearing, but that counsel for the defendants produced to me a letter from T. L. Clarke, counsel for complainant, saying that he did not desire to be present.

I further report that the testimony, including notation of the filing of the deeds, comprises about seven (7) pages, and which, with the deeds attached hereto, with certified copy of evidence, and with the record in the case of The F. C. & P. Railway Company *vs.* Schutte and others, is forwarded with the papers.

All of which is respectfully submitted.

JOHN E. HARTRIDGE, *Examiner.*

In the Circuit Court, Second Judicial Circuit in and for Leon County, Florida. In Chancery.

364 THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Complainant,
vs.
WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Florida, Defendants.

PHILIP WALTER, being produced as a witness on the part of the defendants and having affirmed in due form of law before John E. Hartridge, the undersigned, as examiner, to speak the truth, the whole truth, and nothing but the truth in the testimony that he might give in the above-entitled cause, did testify as follows:

Q. Your residence is where, Mr. Walter?

A. Jacksonville, Duval county, Florida.

Q. Were you at any time—and, if so, when—an officer of the circuit court of the United States for the northern district of Florida, and for what period, and what official?

A. I was clerk of the United States district and circuit courts for the northern district of Florida, to the best of my recollection, from about July, 1874, to July or August, 1894.

Q. Were you, as such officer, Mr. Walter, familiar with the records, minutes, and court proceedings in a certain cause pending in the court you have just mentioned, known as the case of J. Fred Schutte *et al. vs.* Florida Central Railroad Company and The Jacksonville, Pensacola and Mobile Railroad Company and others, defendants?

365 A. I was well acquainted with the records and proceedings in that case at the time of the trial, and have some recollections of them yet—considerable recollection of them yet.

Q. Will you please state, Mr. Walter, if there was a destruction of the records, minutes, papers, documents, and files of the circuit court of the United States for the northern district of Florida; and, is so, when was there such a destruction of them and by what element?

A. Yes; there was a destruction of all of the records and files of the circuit court of the United States for the northern district of Florida, I believe, on the night of the 18th or morning of the 19th of May, 1891. The destruction was total. There was nothing saved or left that was in the building.

Q. Was there a transcript of the records, decrees, proceedings, papers representing the above suit printed in docket form at any time; and, if so, when was it so printed?

A. There was a record of all the proceedings up to a certain time printed in the record which went on the appeal to the Supreme Court of the United States. This record was made up and certified to the Supreme Court of the United States by me on the 22 of December, 1879. Afterwards there were some other papers, by request of counsel, sent up, but they were all of record before that time.

Q. How many copies of that record, Mr. Walter, were printed; do you remember?

A. I do not know. The Supreme Court prints, I think, twenty, except on request of either the plaintiff or defendant for copies, for which they pay. The Supreme Court at that time used to print twenty copies—one for each of the judges, and each party in interest got one.

Q. Were any copies printed other than those printed by the Supreme Court?

A. I think not. I have never seen any.

366 Q. Is there a certificate to the copies which were so printed?

A. Yes, sir.

Q. What is the nature of that certificate and who made it?

A. The certificate is as follows:

"In the Circuit Court of the United States for the Northern District of Florida, Fifth Judicial Circuit.

THE WESTERN NORTH CAROLINA RAILROAD COMPANY
vs.
GEORGE F. DREW, Governor, Trustee, &c.; THE FLORIDA CENTRAL Railroad Company, *et al.*

and

THE WESTERN NORTH CAROLINA RAILROAD COMPANY
vs.
GEORGE F. DREW, Governor, Trustee, &c.; THE JACKSONVILLE, Pensacola & Mobile Railroad Company, *et al.*

and

J. FRED SCHUTTE ET AL., Complainants,
vs.
THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY, The Florida Central Railroad Company, *et al.*, Defendants.

Be it remembered that I, Philip Walter, clerk of the circuit court of the United States in the fifth circuit for the northern district of

Florida, do hereby certify that the foregoing pages, numbered from one to three thousand and forty-seven, inclusive, contain and are a true and correct transcript of the record, as directed by law to be made, and true copies of the proofs and proceedings and of
367 such entries and papers of record and on file in my said office in the case above mentioned, wherein J. Fred Schutte, Jan Prins, Adrianus Prins, Henreich Ulrici, Elias Fuld, J. Borzo, H. Van Booven, Dr. Nicholas Jacob den Tex, J. H. Brumnekruff, J. H. Grem, Willienmier Van Tyer Van Taer, C. Both, L. L. Wetheim, Wysman de Voogt, T. P. Roelopz, Jan Tichelaer, Jr., Jacobus Wertheim, P. Van Reysen, May de Benedithy Beer, Gerard A. Heineken, T. Colom, Charles Gosewinckel, Boon Hartsink Van Tyen, N. J. Franket, Johannes Willem Donk, Vanderstoop & Berg, Adolph Engler, *et al.* are the complainants and The Jacksonville, Pensacola and Mobile Railroad Company, D. Griffith Ambler, M. K. Jessup & Co., Edward C. Anderson, James Hunter, E. Waitzfeller, John M. Guerard, John C. Fallagant, Lewis F. Nicoll, George Robertson, J. A. Hunnicutt, The People's Bank, William McBurney, Winthrop B. Williams, and George F. Drew, governor of the State of Florida; Walter Gwynn, treasurer of the State of Florida; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; George P. Raney, attorney general; Walter Gwynn, treasurer; Columbus Drew, comptroller; George F. Drew, governor, trustee of the internal-improvement fund, and sued as such, *et al.* *and* defendants.

And in the case above mentioned, wherein The Western North Carolina Railroad Company is the complainant and The Florida Central Railroad Company, George F. Drew, governor of the State of Florida; Gidian Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, Frank R. Sherwin, John Collison, Milton S. Littlefield, Walter Gwynn, Thomas B. Coddington, F. Fred Schutte, Jan Prins, Adrianus Prins, Heinrich Ulrici, Elias Fuld, Dr. Nicholas Jacob Den Tex, Edward Isaac Asser, Adolph Engler, trustee, *et al.* are defendants.

And in the case above mentioned, wherein The Western North Carolina Railroad Company is the complainant and George F. Drew, governor of the State of Florida, and George F. Drew,
368 governor; Columbus Drew, comptroller; Walter Gwynn, treasurer; George P. Raney, attorney general; Hugh A. Corley, commissioner of lands and immigration of the State of Florida; The Jacksonville, Pensacola and Mobile Railroad Company, Milton S. Littlefield, Gideon Maria Boissevain, Adrian J. Mildeus, Joseph Zaddock, Adrian Stoop, John Collison, Thos. B. Coddington, *et al.* are defendants, as are necessary on the hearing of the appeals prayed and allowed in the said cases.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

PHILIP WALTER,
Clerk U. S. Circuit Court,
By W. F. QUAILE,
A Deputy Clerk for said Court."

The certificate is signed by myself, by W. F. Quaile, as deputy. I virtually made it.

Q. Were any of those printed transcripts printed by the order of the United States circuit court for the northern district of Florida?

A. No; they were not.

Q. Did you have any of the printed transcripts for distribution yourself?

A. I had none for distribution. I had some copies which I had from the clerk of the supreme court. Anybody could get them.

Q. Do you remember to whom you delivered those copies, if to any person?

A. I did not deliver them to any person. They were burned up at the fire.

Q. Were those printed transcripts made before the destruc-
369 tion of the records you have alluded to before?

A. Oh, yes; ten or twelve years before.

Q. Do you know whether any of those printed transcripts alluded to above were ever delivered to any of the persons who are now or have been officers of the corporation named the Florida Central & Peninsular Railroad Company?

A. I do not.

Q. Have you one of those printed transcripts, Mr. Walter?

A. I have.

Q. Have you any objections to allowing your printed transcript to be filed before the examiner, Mr. John E. Hartridge?

A. I have none in the world, if you can give me assurances that it will be returned to me. I certainly would not let it go into the record to be lost or filed in the supreme court.

And thereupon, at the request of Hon. W. B. Lamar, counsel for defendants, the witness Philip Walter produced his copy of the printed transcript referred to and identified the same, which was filed in evidence, marked "Exhibit A," with the understanding that it should be preserved and returned to him.

Q. Was any portion of the line of railroad from Jacksonville to Chattahoochee and the St. Marks and Monticello branches operated during the years 1879, '80, '81 up to about February, 1882, by any officers appointed by the United States circuit court for the northern district of Florida?

A. Yes; that portion of the road running from Lake City to Chattahoochee river, with the branches mentioned, was operated by A. B. Hawkins and Sherman Conant, receivers appointed by the circuit court of the United States for the fifth circuit, northern district of Florida.

Q. Did they operate the line of railroad during these years
370 from Lake City to Jacksonville?

A. No, sir; they did not.

Q. In operating the line of road referred to above, did the receivers, for themselves, retain and employ counsel to advise and counsel relative to the operation and management of the road?

A. They did.

Q. Will you state the name of the attorney or attorneys whom the receivers retained?

A. I could not. My impression now is that they had Col. Bisbee and Col. Henderson, but I am not certain about it. It was twenty years ago or over.

Q. What Bisbee and what Henderson?

A. Col. Horatio Bisbee and Col. John A. Henderson. I think they were the attorneys.

Q. Were there any earnings or revenues derived during those years from the operation of this road by the receivers?

A. I think not. They had to issue receiver's certificates to pay the expenses of running the road and to keep up the betterments. The road was in very much better condition, though.

Q. Were there separate accounts kept of the earnings and revenues of the road from Jacksonville to Lake City and from Lake City to Chattahoochee, with the branches to Monticello and St. Marks?

A. There were. Of course, the Florida Central Railroad Company kept its own accounts from Jacksonville to Lake City, and the receivers kept the others.

Q. Were they kept separate, then?

A. They were.

Q. Were they kept separate during the time the receivers operated the road?

A. Certainly; of course; they were in two different hands.

371 Q. During the years 1879, '80, '81, who operated the line of road from Lake City to Jacksonville?

A. Operated by the company.

PHILIP WALTER.

And thereupon counsel for defendants offered in evidence certified copy of deed from Sherman Conant and Alexander B. Hawkins, special masters in chancery, to Sir Edward James Reed, dated January 18, 1882, which was filed, marked "Exhibit B."

And thereupon counsel for defendants further offered in evidence certified copy of deed from trustees of J., P. & M. railroad to Sir Edward J. Reed, dated February 4, 1882, which was filed, marked "Exhibit C."

And thereupon counsel for defendants offered in evidence certified copy of deed from Sir Edward J. Reed to Florida Central & Western Railroad Company, dated March 4, 1882, which was filed, marked "Exhibit D."

JOHN E. HARTRIDGE, *Examiner.*

Deed.

Sir Edward J. Reed
to
Florida Central and Western Railroad Company of Railroads.

Whereas the line of railroad already constructed from Jacksonville in the State of Florida to Lake City in the same State of Florida,

a distance of about sixty miles, heretofore known as the Florida Central railroad, together with all the franchises, rights, privileges, and property of every description whatever belonging to the Florida Central Railroad Company, and also the line of railroad already constructed extending from Lake City to Chattahoochee on
372 the Apalachicola river with branch roads from Tallahassee to St. Marks and from Drifton to Monticello in the same State, known as the Jacksonville, Pensacola and Mobile railroad, together with all the franchises, rights, privileges and property of every description whatever belonging to the Jacksonville, Pensacola and Mobile Railroad Company, have been sold in pursuance of proceedings of foreclosure of the bonds issued under the provisions of the laws of the State of Florida, approved respectively June 24th, 1869, and January 28th, 1870.

And whereas the said railroads, franchises, rights, privileges and property of every description whatever have been conveyed to Sir Edward J. Reed, K. C. B. M. P., to hold the title for the purchasers thereof until a corporation was properly organized under the laws of Florida to take title to the same.

And whereas the Florida Central and Western Railroad Company has been duly constituted a body politic and corporate of the said State of Florida by the said purchasers for the purpose of owning, operating and maintaining said railroads, franchises and property.

Now know all men by these presents that we, the said Sir Edward J. Reed and ——, Lady Rosetta Reed, his wife, in consideration of the premises, and the sum of one dollar to us in hand paid, the receipt whereof is hereby acknowledged, have granted, transferred, conveyed and assigned, and by these presents do grant, transfer, convey and assign unto the said Florida Central and Western Railroad Company, its successors and assigns, all of the said railroads, constituting one entire line of railroad already constructed from Jacksonville to Chattahoochee with the branches already constructed from Tallahassee to St. Marks and from Drifton to Monticello, being in all a distance of about two hundred and twenty-four miles, all in the State of Florida. Together with all the franchises, rights, privileges, and property of
373 every description whatever heretofore belonging to the Florida Central Railroad Company, or to the Jacksonville, Pensacola and Mobile Railroad Company to have and to hold the said railroads, branches, franchises, rights, privileges and property of every description whatever, to the said Florida Central and Western Railroad Company, its successors, and assigns, and for the proper use, benefit and behoof of the said Florida Central and Western Railroad Company, its successors and assigns forever, subject however to the lien declared by the decree of the circuit court of the United States for the northern district of Florida, May 31st, 1879, in favor of the trustees of the internal-improvement fund of the State of Florida upon the property and to the extent in said decree fully set forth.

In witness whereof we have hereunto set our hands and seals this fourth day of March, A. D. 1882.

E. J. REED. [L. S.]
ROSETTA REED. [L. S.]

Witness present.

(The word "said" having first been interlined on page 1, line 24, and also the word franchises, on page 2, line 15.)

KINGDOM OF GREAT BRITAIN, *City of London*, } ss:

Consulate General.

Before me, consul of the United States, resident in said city of London, personally came Sir Edward J. Reed, K. C. B., M. P., and Lady Rosetta Reed, his wife, grantors in the foregoing deed of conveyance and known to me to be the individuals described in and who executed said deed, and severally acknowledged the same to be their act and deed. The said Lady Rosetta Reed, being by
374 me separately and privately examined apart from her husband, acknowledged that she executed such deed freely and without any fear or compulsion of her said husband.

In witness whereof I have hereunto affixed my hand and
[SEAL.] the consular seal of my said office this fourth day of March, A. D. 1892.

E. A. MERRITT,
Consul General.

STATE OF FLORIDA, *Office Secretary State*, } ss:

I, Jno. L. Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of a deed from Sir Edward J. Reed to Florida Central and Western Railroad Company as appears of record in this office on pages 444 & 445 of record book, in which deeds and mortgages relating to railroads are recorded.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 10th day of May, A. D. 1899.

[SEAL.] JNO. L. CRAWFORD,
Secretary of State.

Copy.

Deed of Trustees J., P. & M. Railroad
to
Sir Edward J. Reed, K. C. B., M. P.

This indenture made this fourth day of February, A. D. 1882, between Adolph Engler, Henry R. Jackson and Charles H.
375 Simonton, trustees of the first part and Sir Edward James Reed of the second part.

Whereas the circuit court of the United States of the northern district of Florida held in Jacksonville in said district on the 31st

day of May, A. D. 1879, it was adjudged and decreed by said court in a certain cause then pending in said court between J. Fred Schutte and others, complainants and The Jacksonville, Pensacola and Mobile Railroad Company and others defendants that the said Jacksonville, Pensacola and Mobile railroad and all its property, rights and franchises be sold by and under the direction of Sherman Conant and Alexander B. Hawkins, special masters in chancery, duly appointed for that purpose, at public auction at Jacksonville in the district aforesaid; and whereas the said Sherman Conant and Alexander B. Hawkins in pursuance of the said decree did on the 25th day of September, A. D. 1879, sell at public vendue at the post-office in Jacksonville aforesaid the said Jacksonville, Pensacola and Mobile railroad *railroad* lying between Lake City and Chattahoochee, with a branch from Tallahassee to St. Marks, and a branch from Drifton to Monticello and all its property, privileges, rights and franchises at which sale the said railroad and all the property, privileges, rights of the said Jacksonville, Pensacola and Mobile Railroad Company, and franchises were struck off and sold to the said Adolph Engler, for the benefit of said Adolph Engler and the said Henry R. Jackson and Charles H. Simonton, trustees, parties of the first part, for the sum of fifty thousand dollars, which said sale was confirmed by an order made by said court on the 8th day of July, A. D. 1881, in pursuance of which the said special masters did duly convey the said railroad and its property by deed to the said Adolph Engler, Henry R. Jackson and Charles H. Simonton, trustees, on the same day.

Now therefore this indenture witnesseth that the said Adolph Engler, Henry R. Jackson and Charles H. Simonton, trus-
376 tees, and parties of the first part, to these presents, in consideration of the premises and the sum of one dollar and at the request of Jacobus Wertheme and Charles D. Willard, attorneys-in-fact of the complainants in said cause, which sum of one dollar is hereby acknowledged to be paid, have granted, bargained, sold and conveyed and doth grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns forever the said Jacksonville, Pensacola and Mobile railroad and all the property, privileges and franchise of the said Jacksonville, Pensacola and Mobile Railroad Company subject however in all respects to the first lien and all right of enforcing the same declared by the decree of said court, May 31st, 1879, in favor of the trustees of the internal-improvement fund of the State of Florida upon the railroad described in the bill of complaint in said cause running from Lake City to Quincy in said State with the branch road to Monticello and the railroad running from Tallahassee to St. Marks in said State and all the property rights and franchises belonging or appertaining thereto to secure the payment to the said trustees of the internal-improvement fund of $463,175.37 and interest thereon since March 20th, 1869, at the rate of eight per centum per annum to attach and rest upon said railroad and property as follows: Of said principal sum upon said railroad from Lake City to Quincy with the branch to Monticello $412,400 with interest as aforesaid, and upon said railroad from

Tallahassee to St. Marks of said principal sum $50,775.37 with interest as aforesaid. To have and to hold the said railroad and the appurtenances above described and hereby intended to be granted and conveyed unto the said party of the second part and his heirs and assigns and to their own proper use, benefit and behoof forever, subject always as aforesaid.

In witness whereof the parties of the first part, trustees as
377 aforesaid have hereunto set their hands and seals the day and year first above written.

AD. ENGLER. [L. S.]
HENRY R. JACKSON. [L. S.]
CHARLES H. SIMONTON. [L. S.]

Signed, sealed, and delivered in the presence of—

C. D. WILLARD AND
CHARLES EDGAR MILLS.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 4th day of February, A. D. 1882, before me, Charles Edgar Mills, a duly authorized commissioner for the State of Florida in New York, residing in said city, county, and State of New York, personally appeared Adolph Engler, Henry R. Jackson, and Charles H. Simonton, trustees, etc., within described, personally known to me and to me known to be the individuals described in and who executed the within instrument as such trustees, — acknowledged each, respectively, that they had executed the same to be their free and voluntar*ily* act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and official seal this 4th day of February, A. D. 1882.

[SEAL.] CHARLES EDGAR MILLS,
Commissioner for Florida in New York,
N. 115 *Broadway, N. Y. City.*

STATE OF FLORIDA, } ss:
Office Secretary of State, }

I, Jno. L. Crawford, secretary of state of the State of Florida,
378 do hereby certify that the foregoing is a true and correct copy of a deed from Adolph Engler, Henry R. Jackson, and Charles H. Simonton, trustees, to Sir Edward James Reed, as appears of record in this office, on pages 442 & 443 of Record Book, in which deeds and mortgages relating to railroads are recorded.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 10th day of May, A. D. 1899.

[SEAL.] JNO. L. CRAWFORD,
Secretary of State.

This indenture made this the eighteenth day of January, A. D. one thousand eight hundred and eighty-two, between Sherman Conant and Alexander B. Hawkins, special masters in chancery, duly appointed by the honorable circuit court of the United States for the fifth circuit and northern district of Florida of the first part, and Sir Edward James Reed, of the second part.

Whereas, at a circuit court of the United States, for the northern district of Florida, held at Jacksonville in said district, on the 31st day of May, A. D. 1879, it was adjudged and decreed by the said court in a certain cause then depending in said court between J. Fred Schutte and others, complainants, and The Florida Central Railroad Company and others, defendants, that the said Florida Central railroad and all its property, rights, franchises, be sold by and under the direction of Sherman Conant and Alexander B. Hawkins, special masters in chancery, duly appointed for that purpose, at public auction to the highest bidder for cash, at the post-office at Jacksonville, in the district aforesaid, after making
379 ninety days' advertisement of such sale, in a newspaper of general circulation in each of the cities of New York in the State of New York and of Jacksonville aforesaid.

And whereas, the said Sherman Conant and Alexander B. Hawkins, masters in chancery, and parties of the first part to these presents, in pursuance of the order and decree of the said court, did on the sixth day of January, A. D. one thousand eight hundred and eighty-two sell at public vendue at the post-office in Jacksonville aforesaid the Florida Central railroad lying between Lake City and Jacksonville and all its property, privileges, rights and franchises, having first given the previous notice of the time and place of the said sale, as required by the order and decree aforesaid, at which sale the said railroad and all its property, privileges, rights and franchises were struck off and sold to the party of the second part to these presents, for the sum of three hundred and ninety-five thousand dollars, that being the highest sum bidden for the same.

Now, therefore, this indenture witnesseth, that the said Sherman Conant and Alexander B. Hawkins, special masters in chancery, and parties of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of said decree, and also in consideration of the premises and the sum of three hundred and ninety-five thousand dollars paid by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, the Florida Central railroad, and all its property, privileges, rights, and franchises, to have and to hold the said railroad and appurtenances above described and hereby intended to be granted and conveyed unto the said party of the second part and his heirs and assigns, and
380 to their own proper use, benefit and behoof forever.

In witness whereof the parties of the first part, masters as

aforesaid, have hereunto set their hands and seals, at Jacksonville, Florida, the day and year first above written.

SHERMAN CONANT, [L. S.]
ALEXANDER B. HAWKINS, [L. S.]
Special Masters.

Signed, sealed, and delivered in presence of—

C. D. WILLARD.
JNO. A. HENDERSON.

Recorded April 4th, A. D. 1884.

STATE OF FLORIDA, *Office Secretary of State,* } *ss:*

I, Jno. L. Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and correct copy of a deed from Sherman Conant and Alexander B. Hawkins, special masters in chancery, to Sir Edward James Reed, as appears of record in this office on pages 630 & 631 of Record Book, in which deeds and mortgages relating to railroads are recorded.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 10th day of May, A. D. 1899.

[SEAL.] JNO. L. CRAWFORD,
Secretary of State.

On the 19th day of December, A. D. 1899, defendants set said cause down for hearing as follows:

381 In Circuit Court, Second Judicial Circuit of Florida in and for Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM H. REYNOLDS, Comptroller of the State of Florida, and John A. Pearce, Sheriff of Leon County, Florida.

The above cause set down for a hearing by defendants this 19th day of December, A. D. 1899.

W. B. LAMAR,
Attorney General and Solicitor for Defendants.

On the 6th day of January, 1900, the following final decree was made and entered by the court:

In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

THE FLORIDA CENTRAL AND PENINSULAR RAILroad Company
vs.
WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County.
} On Bill for Injunction.

382 This cause *coming* on for a final hearing before the undersigned, judge of the third judicial circuit, sitting in place of Honorable John W. Malone, judge of the said second circuit, disqualified, and was argued by T. L. Clarke, Esqr., for the complainant, and W. B. Lamar, Esqr., attorney general, for the defendants, and the court, having fully considered the same, does hereby order and adjudge and decree as follows, to wit:

First. That so much of said proceedings as prays that the defendants be enjoined and restrained from the collection of taxes assessed in 1885 for an- on the account of the State of Florida on the line of railroad of the complainant company that lies between Fernandina and Cedar Keys and Waldo and Ocala for the years 1879, 1880, and 1881, and on the line from Ocala to Waldo to Wildwood for the taxes of the years 1881, be, and the same is hereby, denied.

Second. It is further ordered, adjudged, and decreed that as to the taxes thus assessed for the years 1879, 1880, and 1881, the collection of which is likewise prayed to be enjoined on so much of the lines of the railroad of the complainant as lies between Jacksonville and River Junction, with the branches thereof to Monticello and St. Marks, the prayer of the said complainant is granted, and the defendants, William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, be, and they are hereby, forever enjoined from collecting the same or in anywise interfering with said complainant on account of the same.

Third. It is further ordered, adjudged, and decreed that *as to* the prayers of the complainant as in said proceedings made, other than as herein allowed, be, and the same are hereby, denied.

Fourth. It is further ordered, adjudged, and decreed that the defendants do pay the costs herein, to be taxed by the clerk.

383 Done and ordered, at chambers, at Live Oak, Florida, this the 6th day of January, 1900.

JNO. F. WHITE,
Judge of the Third Judicial Circuit, Sitting in Place of Hon. John W. Malone, Judge of the Second Judicial Circuit, Disqualified.

On the 8th day of January, 1900, defendants entered their appeal from said final decree in words following, to wit:

In the Circuit Court, Second Judicial Circuit of Florida in and for Leon County. In Chancery.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY
vs.
WILLIAM H. REYNOLDS, as Comptroller of Florida, and JOHN A. Pearce, as Sheriff of Leon County, Florida.

Comes now the above-named defendants, William H. Reynolds, as comptroller of Florida, and John A. Pearce, as sheriff of Leon county, in Florida, into the clerk's office of said circuit court, by William B. Lamar, as attorney general of Florida, their counsel and solicitor, and enters their appeal from the decree rendered herein on the 6th day of January, A. D. 1900, granting the prayer contained in the bill of review filed by complainant in this cause, and enjoining defendants from collecting the taxes assessed by law for the years 1879, 1880, and 1881 upon complainant's line of railroad from Jacksonville to River Junction and branches to St. Marks and Monticello, and entered of record by Judge John F. White,
384 judge of the third judicial circuit of Florida, Judge John W. Malone, of the second judicial circuit therein, being disqualified, against them, the said defendants, and in favor of said complainant, to the January term of the supreme court of Florida, A. D. 1900, to the 15th day of February, A. D. 1900, a day in said term, to be held at Tallahassee, in said State, commencing on the 9th day of January, A. D. 1900.

W. B. LAMAR,
As Attorney General and Counsel and Solicitor for Defendants.

Tallahassee, January 8th, A. D. 1900.

On the 13th day of January, A. D. 1900, defendants filed their assignment of errors as follows:

In the Circuit Court for Leon County, Second Judicial Circuit of Florida. In Chancery.

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, in Florida, Appellants,
vs.
FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

Assignment of Errors.

And now comes the appellants, by their solicitor, W. B. Lamar, attorney general, and files with the clerk of the circuit court of Leon county the following assignment of errors:

1. The circuit court erred in making the order dated Sep-
385 tember 13th, A. D. 1897, granting leave to the Florida Central and Peninsular Railroad Company to file a bill of review in accordance with the prayer of its petition therefor.

2. The circuit court erred in making and granting the decree dated January 6th, A. D. 1900.

3. The circuit court erred in decreeing:

1. That so much of said proceedings as prays that the defendants be enjoined and restrained from the collection of taxes assessed in 1885 for an- on the account of the State of Florida on the line of railroad of the complainant company that lies between Fernandina and Cedar Keys and Waldo and Ocala for the years 1879, 1880, and 1881, and on the line from Ocala to Waldo to Wildwood for the taxes of the year 1887, be, and the same is hereby, denied.

4. The circuit court erred in decreeing:

(2.) It is further ordered, adjudged, and decreed that as to the taxes thus assessed for the years 1879, 1880, and 1881, the collection of which is likewise prayed to be enjoined on so much of the lines of the railroad of the complainant as lies between Jacksonville and River Junction, with branches thereof to Monticello and St. Marks, the prayer of the said complainant is granted, and the defendants, William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, be, and they are hereby, forever enjoined from collecting the same or in anywise interfering with said complainant on account of the same.

5. The circuit court erred in decreeing:

(3.) It is further ordered, adjudged, and decreed that *as to* the prayers of the complainant, as in said proceedings made, other than as herein allowed, be, and the same are hereby, denied.

6. The circuit court erred in decreeing:

386 (4.) It is further ordered, adjudged, and decreed that the defendants do pay the costs herein, to be taxed by the clerk.

7. The circuit court erred in not dismissing the bill of review.

Wherefore appellants pray that said orders and decrees in the matters above set forth be reversed and annulled.

W. B. LAMAR,
Attorney General and Solicitor for Defendants.

Tallahassee, Florida, January 13th, 1898.

STATE OF FLORIDA, }
Leon County. }

Before me personally appeared W. R. Taylor, to me known, who, being sworn, says he delivered to Hon. John A. Henderson, solicitor for the Florida Central and Peninsular Railroad Company, at his law office, in Tallahassee, Florida, on this 13th day of January, 1900, a copy of the foregoing assignment of errors in the above-stated cause.

W. R. TAYLOR.

Sworn to and subscribed before me this January 13th, 1900.
[SEAL.] COUNCIL A. BRYAN, *Clerk.*

On the 13th day of January, 1900, defendants filed the following directions for making up transcript of record:

387 In the Circuit Court for Leon County, Second Judicial Circuit of Florida. In Chancery.

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, in Florida, Appellants,

vs.

FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

Directions for Making up Transcript of Record.

To Council A. Bryan, clerk.

SIR: You will please begin on the 30th day of January, A. D. 1900, and make up by the 12th day of February, 1900, a transcript of the record in the above case, and you will include in said transcript copies of the following papers, showing date of the filing of the same, viz:

1. Petition for leave to file bill of review.
2. Order granting leave to file bill of review.
3. Bill of review.
4. Answer to bill of review.
5. Replication to bill of review.
6. Order of judge re-establishing lost record and appointing J. E. Hartridge commissioner, dated March 9th, 1899.
7. Deposition of A. B. Hawkins in behalf of plaintiff.
8. Deposition of Philip Walter in behalf of plaintiff.
9. Deposition of H. R. Duval in behalf of plaintiff.
10. Deposition of Adolph Engler in behalf of plaintiff.

388 11. Deposition of A. B. Hawkins in behalf of defendant.

12. Report of J. E. Hartridge, examiner, and deposition of Philip Walter in behalf of defendants and Exhibits "B," "C," and "D" attached to said report.

13. Order setting down cause for a hearing.
14. Final decree of date January 6th, 1900.
15. Entry of appeal of date January 8th, 1900.

And you will please omit the following papers in said above-named cause, viz:

1. Agreement of counsel for appointment of J. E. Hartridge as commissioner, filed January 26th, 1899.
2. Order extending time for taking testimony, filed January 28th, 1899.
3. Order extending time for taking testimony, filed April 13th, 1899.
4. Motion for order to extend time for taking testimony, filed April 26th, 1899.
5. Order for extending time for taking testimony, filed May 15th, 1899.
6. Request for issuance of commission, filed May 6th, 1899.
7. Agreement of counsel for appointment of examiners, filed May 18th, 1899.

8. Order setting down cause for hearing, filed May 26th, 1899.
9. Order to open interrogatories, filed May 27th, 1899.
10. Notice and affidavit, filed June 5th, 1899.

Also omit all commissions upon which depositions were taken, instructions to commissioners, jurats, and certificates and oaths of commissioners.

The above papers to be so copied and omitted comprise all
389 the papers filed in said record, from the filing of said petition for leave to file bill of review to the entry of said appeal.

W. B. LAMAR,
Attorney General and Solicitor for Defendants.

Tallahassee, Florida, January 13th, 1900.

NOTE.—Please certify to the transcript of the record and make two (2) exact copies of said transcript (same not to be certified), observing same paging and numbering in the copies as in the certified transcript, and in copying the depositions please make the answers to questions immediately follow the question to which it is the answer.

W. B. LAMAR,
Attorney General and Solicitor for Defendants.

Tallahassee, Florida, January 13th, 1900.

STATE OF FLORIDA, }
Leon County. }

Before me personally came W. R. Taylor, to me known, who, being sworn, says that he delivered to Hon. John A. Henderson, solicitor for the Florida Central and Peninsular Railroad Co., at his law office in Tallahassee, Florida, on the 13th day of January, A. D. 1900, a copy of the foregoing directions for making up a transcript of the record in the above-stated cause.

W. R. TAYLOR.

Sworn & subscribed before me on this January 13th, 1900.

[SEAL.] COUNCIL A. BRYAN, *Clerk.*

On the 29th day of January, 1900, complainant filed the following additional directions for making up transcript of record:

390 In the Circuit Court of the Second Judicial Circuit of Florida in and for Leon County. In Chancery.

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, State of Florida, Appellants,

vs.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

Additional Directions for Making up Transcript of Record.

To Council A. Bryan, clerk circuit court, Leon county.

SIR: You will please include in the transcript of the record in this cause copies of the following papers, showing date of filing of same, to wit:

1. Original bill for injunction and relief, with the exhibits thereto, filed November 2nd, 1892.
2. The answer of defendants Bloxham, comptroller, and Pearce, sheriff, to said original bill, filed January 2nd, 1893.
3. Replication of complainant to said answer, filed Sept. 2nd, 1893.
4. Decree made by Judge John F. White, Nov. 25th, 1893.
5. Mandate of supreme court, dated May 22nd, 1897.
6. Mandate of supreme court, dated May 22nd, 1897.

391 7. Decree made by Judge John F. White, June 19th, 1897.

T. L. CLARKE,
Solicitor for Florida Central and Peninsular Railroad Company.

Tallahassee, Fla., January 29th, 1900.

I, Council A. Bryan, clerk of the circuit court in and for the county of Leon, State of Florida, do hereby certify that the foregoing pages, containing two hundred and seventy pages and numbered from one to two hundred and sixty-nine, inclusive, contain a correct transcript of the record of the judgment in the case of The Florida Central and Peninsular Railroad Company, plaintiff, against William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, State of Florida, defendants, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court this 14th day of February, 1900.

[SEAL.] COUNCIL A. BRYAN,
Clerk of the Circuit Court for the County of Leon.

392 Whereupon came the parties, both appellants and appellee, in said cause, by their respective counsel, and submitted their cause to the said supreme court upon the said transcript of the record and oral arguments.

And at a subsequent day, to wit, on the 26th day of June, A. D. 1900, judgment was rendered by the said supreme court of the State of Florida in words and figures, to wit:

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Appellants,
vs.
FLORIDA CENTRAL AND PENINSULAR Railroad Company, Appellee.

Upon Appeal from a Decree of the Circuit Court within and for the County of Leon.

This cause having been submitted to the court at the last term thereof upon a transcript of the record of the decree aforesaid and the argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is error in the said decree; it is therefore considered, ordered, and adjudged by the court that the said decree of the circuit court enjoining the sale for the taxes assessed for the years 1879, 1880, and 1881 on the line of appellee's road from Jacksonville to Chattahoochee and branches is reversed and the bill of review is hereby dismissed; and it is further ordered that the appellants do
393 recover of the appellee their costs by them in this behalf expended, which costs amount to the sum of three hundred seventy-nine and $\frac{17}{100}$ dollars, all of which is ordered to be certified to the court below.

R. F. TAYLOR,
Chief Justice.

And afterwards, to wit, on the 24th day of October, A. D. 1900, came the appellee, The Florida Central and Peninsular Railroad Company, by counsel, and filed in open court, before the chief justice, its petition for the allowance of a writ of error to said judgment, returnable before the Supreme Court of the United States thirty days from the issuance of the citation herein; which petition was in the words and figures as follows, to wit:

In the Supreme Court of the State of Florida.

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A Pearce, as Sheriff of Leon County, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

To the Honorable R. F. Taylor, chief justice of the supreme court of Florida:

The petition of The Florida Central and Peninsular Railroad Company, appellee in the above-stated cause, would respectfully show that a final decree was rendered by said supreme court in the
394 above-stated cause on the 26th day of June, A. D. 1900, wherein was drawn in question the validity of the statute of

the State of Florida, to wit, "An act entitled an act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment," approved February 12th, 1885, being chapter 3558, Laws of Florida, and wherein was drawn in question the validity of the assessment of taxes for State and county purposes under and in pursuance of said statute upon the lines of railroad of the respondent extending from the city of Jacksonville, in said State of Florida, to the Chattahoochee river, in said State, with branches from Tallahassee to St. Marks and from Drifton to Monticello, and the line extending from Fernandina to Cedar Keys and from Waldo to Ocala, all in said State of Florida, on the ground that the said statute and the taxes imposed thereunder *was* repugnant to the Constitution of the United States, and the decision was in favor of the validity of said statute and the assessment of taxes thereunder; all of which appears of record in the said supreme court.

Your petitioner therefore prays your honor to allow a writ of error to appellee in the above-stated cause, returnable thirty days from the issuance of the citation hereunder.

The prayer of your petitioner being granted, petitioner will ever pray, &c.

T. L. CLARKE,
Solicitor for Petitioner, The Florida Central and Peninsular Railroad Company.

(Endorsed:) Filed Oct. 24, 1900. B. B. Wilson, clerk supreme court.

395 Whereupon, on the same day, the prayer of the petition was granted by an order in words and figures as follows, to wit:

In the Supreme Court of the State of Florida.

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Appellants,
v.
THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

And now comes the appellee, by its counsel, and files its petition praying for a writ of error to be allowed by this court to the final decree rendered on the 26th day of June, A. D. 1900, returnable thirty days from the issuance of citation herein to the Supreme Court of the United States.

Whereupon it is considered and ordered by the court that the prayer of petitioner is granted and the writ of error is allowed.

This October 24th, 1900.

R. F. TAYLOR,
Chief Justice Sup. Ct. of Fla.

396 And thereafter, upon the same day, upon presentation to the chief justice of said petition for the allowance of a writ of error, the same was allowed by the chief justice, as appears upon the original writ of error *as* accompanying this return, and upon the same day a citation was allowed by the chief justice, as appears upon the original citation accompanying this return and the writ of error aforesaid.

And thereafter, upon the same day, the original bond of the plaintiff in error in this writ of error, approved by the Hon. R. F. Taylor, chief justice of the supreme court of the State of Florida, was filed in words and figures as follows, to wit:

In Supreme Court of the State of Florida.

WILLIAM H. REYNOLDS, as Comptroller of the State of Florida, and John A. Pearce, as Sheriff of Leon County, Appellants,
v.
THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Appellee.

Know all men by these presents that The Florida Central and Peninsular Railroad Company and Julius Diamond and John W. Henderson are held and firmly bound unto William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, and their successors in office, in the sum of one thousand dollars; — well and truly to be paid, we bind ourselves
397 and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Signed, sealed, and dated on this 24th day of October, A. D. 1900.

Whereas the above-named The Florida Central and Peninsular Railroad Company has sued out a writ of error to the Supreme Court of the United States to reverse the decree rendered in the above-stated cause by the supreme court of Florida, now, therefore, if the above-named The Florida Central and Peninsular Railroad Company shall prosecute its said writ of error to effect and answer and pay all costs if it shall fail to make good its plea, the said writ of error not being a supersedeas, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

THE FLORIDA CENTRAL & PENINSULAR R. CO., [SEAL.]
By JOHN A. HENDERSON,
Its 2 V. Pres't.
JULIUS DIAMOND. [SEAL.]
JOHN W. HENDERSON. [SEAL.]

Taken & approved this October 24th, 1900.
R. F. TAYLOR,
Chief Justice Sup. Ct. of Fla.

(Endorsed:) Filed Oct. 24, 1900. B. B. Wilson, clerk supreme court.

398 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages numbered from one (1) to three hundred and ninety-seven (397), inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the case of William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, appellants, and The Florida Central and Peninsular Railroad Company, appellee, as appears upon the files and records of my office.

Seal Supreme Court of the State of Florida.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, this 25th day of October, A. D. one thousand nine hundred.

B. B. WILSON,
Clerk Supreme Court, State of Florida.

399 The foregoing transcript of the record of proceedings of the supreme court of the State of Florida in the case of William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, *vs.* The Florida Central and Peninsular Railroad Company is transmitted to the Supreme Court of the United States, in obedience to a writ of error issued hereon, the original of which is hereto attached.

B. B. WILSON,
Clerk Supreme Court, State of Florida.

400 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida, before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, and The Florida Central and Peninsular Railroad Company, wherein was drawn in question the validity of a statute of and an authority exercised under said State of Florida, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said The Florida Central and Peninsular Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-third (23d) day of November, A. D. nineteen hundred (A. D. 1900), in the Supreme

Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 24th day of October, in the year of our Lord one thousand nine hundred (A. D. 1900), and clerk of the circuit court of the United States for the fifth judicial circuit, northern district of Florida.

[Seal U. S. Circuit Court, Northern Dist. of Florida.]

FREDERICK W. MARSH,
Clerk of the United States Circuit Court for the Fifth Judicial Circuit of the Northern District of Florida,
Per W. C. HODGES, *Deputy Clerk.*

Writ of error allowed October 24th, A. D. 1900.

R. F. TAYLOR,
Chief Justice, Supreme Court of Florida.

400½ [Endorsed:] The Florida Central and Peninsular Railroad Company, plaintiff in error, *vs.* William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, defendants in error. Writ of error. Filed Oct. 24, 1900. B. B. Wilson, clerk supreme court.

401 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 23d day of November, A. D. nineteen hundred, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein The Florida Central and Peninsular Railroad Company is plaintiff in error and you are defendant- in error, to show cause, if any there be, why the final decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. F. Taylor, chief justice of the supreme court of the State of Florida, this 24th day of October, in the year of our Lord nineteen hundred (A. D. 1900).

[Seal Supreme Court of the State of Florida.]

R. F. TAYLOR,
Chief Justice of the Supreme Court of Florida.

By the chief justice:
Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

On this 24th day of October, in the year of our Lord nineteen hundred, personally appeared L. M. Scarborough before me, the subscriber, and makes oath that he delivered a true copy of within citation to William H. Reynolds, comptroller of the State of Florida.

L. M. SCARBOROUGH.

Sworn to and subscribed before me this 24th day of October, A. D. 1900, at Tallahassee, Fla.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court of Florida.

I accept service upon the within for John A. Pearce, sheriff of Leon county, Florida, this Oct. 25th, 1900.

W. B. LAMAR,
Attorney General of Florida.

401½ [Endorsed:] The Florida Central and Peninsular Railroad Company, plaintiff in error, *vs.* William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, defendants in error. Citation.

402 In the Supreme Court of Florida, January Term, A. D. 1895.

W. D. BLOXHAM, Comptroller, and JOHN A. PEARCE, Sheriff, Appellants,
vs.
FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, Appellee.
} Leon County.

Syllabus.

1. A claim that the exemption of certain railroad property from taxation provided for in the eighteenth section of the internal-improvement act (chapter 610, Laws of Florida, act of 1855–'6, McClellan's Digest, § 21, p. 596) is a continuing exemption, that it is an incident of the property attached to the *rem*, and follows it into whosoever hands the same may come, cannot be maintained.
2. That the right of exemption from taxation which, under the internal-improvement act referred to in the preceding headnote, vested in the original owners and builders of the roads exempted was a personal privilege and did not pass with the assignment of the property, is, by the decision of the Supreme Court of the United States in the case of Louisville & Nash-
403 ville R. R. Co. *vs.* Palmes, 109 U. S., 244, a proposition beyond the reach of cavil or controversy, and is no more open to discussion in this State.
3. No corporation can be created in this State since the adoption of the constitution of 1868, or the amendments of 1875, capable of accepting and enjoying the privilege of exemption from

taxation provided for in the eighteenth section of the internal-improvement act, referred to in preceding head-notes.

4. Railroads built or acquired by corporations coming into existence after the adoption of our constitution of 1868, whether in the hands of the original building corporations or their assignees and successors, were liable to taxation under that constitution in like manner as other property.

5. A State cannot be sued without its consent. The suit in the court below, while against two officers of the State named as defendants, was as to one of the objects sought to be accomplished by it to all intents and purposes a suit against the State for the recovery of money, and a judgment or decree against such officers would have been a judgment or decree against the State. This branch of the suit should have been dismissed for want of jurisdiction.

6. By saying that a State cannot be sued without its consent, as stated in preceding head-note, it is not meant that no judicial action under any circumstances whatever can be taken against the State, but, confining ourselves to the facts of this particular case, that a suit like that before us—a suit for the recovery of money—whether in the form of a bill in equity or in the
404 nature of an action of assumpsit, does not lie against the sovereign State.

7. The constitutions of this State, both of 1868 and 1885, contain a section as follows: "Provision may be made by general law for bringing suits against the State as to all liabilities now existing or hereafter originating," but no such provision having been made by the legislature, these sections were inoperative to change the general principles upon which we hold that the State is not liable to be sued.

8. Appellee claimed that it is entitled to have certain railroad property exempted from taxation because it and its predecessors contracted and invested their money in the property under a judicial construction once prevailing in this State declaring that the exemption from taxation provided for in the eighteenth section of the internal-improvement act attached to property of this kind as an incident without regard to changes in ownership of the same; that they relied upon such judicial construction and invested their money upon faith in the exemption from taxation therein declared. Held, without determining the effect of such judicial construction, that appellee should not have its property declared exempt from taxation by reason thereof, because the more important and vital question as to whether the appellee or its predecessors were such corporations as under the constitution of 1868 could avail themselves of such exemption from taxation had not been determined in this State, and upon the proper determination of this question the property would be liable to taxation in the hands of appellee and its predecessors without reference to the judicial construction referred to. It cannot avail appellee that the property was exempt from taxation if it and

its predecessors were such corporations as were prohibited by the constitution from holding the same as exempt.

405 9. All property in the State ought to bear its just burden of taxation, and there can be no doubt because it is well established by authority that if property lawfully liable thereto escapes taxation for any one or more years it is competent for the legislature to provide for the collection of such taxes in arrears from the owners of the property during the time for which it escaped taxation or from purchasers of the same whose rights or titles accrued after a lien for such taxes had been acquired by the State by subjecting the property taxed to the payment of the same.

10. When the time for the assessment and collection of taxes has passed and the taxing statute affixes no lien to the property, the State has made no assessment or taken any other step to collect the same, real estate cannot be pursued for back taxes when it has gone into the hands of innocent purchasers for value. Railroads, under the statute of this State, are real estate.

11. Under our laws, as they existed prior to the adoption of the Revised Statutes, there was no lien upon real estate for its taxes until fixed by an assessment of the same.

12. We hold that under the facts and circumstances of this case, upon principles of law stated in the next three succeeding head-notes, that the appellee was not an innocent purchaser for value of the property sought to be subjected to taxation.

13. A transfer of property subject to taxation by persons in their individual capacity to themselves as constituting a corporation does not constitute such corporation an innocent purchaser of said property so as to defeat the State's claim for taxes thereon.

406 14. When a new corporation is created by the consolidation of two or more other corporations, and no provision is made by statute or the articles of incorporation for the payment of the debts and liabilities of the constituent corporations, the new corporation assumes all the debts and liabilities of the constituent companies, which follow as an incident of the consolidation, and under such circumstances such consolidated corporation is not an innocent purchaser for value of the property of its constituent companies, so as to prevent the State from subjecting the same to payment of taxes thereon.

15. A corporation from whom taxes are due the State cannot defeat the collection thereof by vesting its property subject to taxes in another corporation, of which it remains a constituent part.

16. Lines of railroad which were not in existence during the years 1879, 1880, and 1881 cannot be taxed for those years that passed away before they were built; neither can they be subjected to sale for payment of taxes due upon other railroads by reason of the accidental circumstance that they have be-

come the property of the same corporation that owns the roads liable to taxation.

17. The act of 1885 (chapter 3558, Laws of Florida) is general in its terms, embraces all of a class—all railroads in a similar condition. It is not a special or local law for the assessment and collection of taxes, but is of general and uniform operation throughout the State, and is not in conflict with any provision of the State constitution.

18. The courts cannot be influenced in their action by objections which apply not to the constitutionality but only to the policy,
407 the justice, and wisdom of the law. The relief from such legislation, if the objections urged are well taken, must come from the legislative and not the judicial department of the Government. The courts are bound to uphold the statutes unless they are clearly in conflict with the Constitution.

Opinion.

LIDDON, *J.:*

A threefold object was sought to be accomplished by the bill of complaint: (1) to have it decreed that the exemption from taxation under the 18th section of the internal-improvement act was a continuing exemption for thirty-five years after the completion of the several lines of railroad constructed on the routes in said act designated, and that said exemption attached to the *rem*, following the property into whosoever hands the same might come; (2) to have a decree for the recovery by the complainant, as successor of the Florida Railway and Navigation Company, of $140,812.47 paid by said company in 1885 for taxes of 1882, 1883, and 1884 to the State of Florida alleged to be illegal and to have been paid under duress and upon protest; (3) to enjoin the collection of taxes by the defendants for the years 1879, 1880, and 1881, which were sought to be collected under the provisions of the statutes, chapters 3558 and 4073, Laws of Florida. The first two objects of relief were refused by the court below, but the third was granted. Both parties allege in their briefs that the complainant and the defendants each
408 appealed from the final decree below. The record shows an appeal by the defendants only. Both sides have presented the whole case upon the principle that an appeal in chancery is practically a rehearing and opens up the whole case to the respondents. Southern Life Insurance Company *v.* Cole, 4 Fla., 359. We consider the whole case, and whether the complainant below was entitled to any of the different matters of relief for which it prayed in its bill of complaint.

The question involved in the first relief prayed for is easily disposed of. The claim that the exemption from taxation provided for in the 18th section of the internal-improvement act, chapter 610, Laws of Florida (Acts of 1855–'6, page 16; McClellan's Digest, sec. 21, page 596), is a continuing exemption, that it is an incident of property attached to the *rem*, and follows it into whosoever hands the same may come, cannot be maintained in this State. Neither the complainant in this case nor its immediate predecessor is the original

builder of the railroads which are sought to be exempted, and both are corporations organized since 1868. That the right of exemption from taxation, which under the internal-improvement act of 1855 vested in the original owners and builders of the roads exempted, was a personal privilege and did not pass with the assignment of the property is by the decision of the Supreme Court of the United States in the case of Louisville & Nashville R. R. Co. *v.* Palmes, 109 U. S., 244, a proposition beyond the reach of cavil or controversy. It is no more open to discussion in this State. The complainant is a corporation which has come into existence since the adoption of the constitution of 1868 and the amendments thereto in 1875. Section 24 of article XVI of the constitution of 1868, as amended by
409 article XI of the amendments of 1875, as shown by chapter 2041, Laws of Florida, reads as follows: "The property of all corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such property be held and used exclusively for religious, educational, or charitable purposes." No corporation could be created since the adoption of this constitution capable of accepting and enjoying the exemption from taxation which was claimed by the complainant. Louisville & Nashville R. R. Co. *v.* Palmes, *supra*.

It is alleged in the bill of complaint and admitted by the answer that certain lines of railroad of the complainant built in the years 1877, 1881, and 1883 were built upon the lines designated by the internal-improvement act, in accordance with the provisions of the same, and had been duly accepted by the trustees of the internal-improvement fund as completed, and that they were acquired by the complainant by purchase from corporations composed wholly or in part by consolidation of the building corporations. It cannot be justly claimed that there was a vested right to exemption from taxation of these roads under the 18th section of the internal-improvement act. They were all property built or acquired by corporations coming into existence after the adoption of the constitution of 1868, and, whether in the hands of the original building corporations or their assignees and successors, were clearly liable to taxation under that constitution. The relevant portion of the constitution of 1868, as amended in 1875, has already been quoted. As it originally stood, section 24 of article XVI of the constitution of 1868 read as follows: "The property of all corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such corporation be for religious, educational or charita-
410 ble purposes." The only change made by the amendment of 1875 was that instead of excepting from taxation the general property of religious, educational, and charitable corporations the property excepted was required "to be held and used exclusively for religious, educational, or charitable purposes." Under the section of the constitution under discussion as it originally stood, or as it stood after the amendment of 1875, the railroad and other property of corporations brought into existence and acquired while the above-quoted constitutional provisions were in force were subject to taxation in like manner as other property. Whatever might

be said of vested rights of exemption from taxation of railroads built under the internal-improvement act before the adoption of the constitution of 1868, while remaining the property of the corporations which built them, there can be no force in an argument which claims that, notwithstanding the constitutional provisions quoted, the 18th or exemption section of the internal-improvement act conferred a vested right to exemption from taxation of railroads built by corporations created after the constitution of 1868 became the paramount law of the State. It cannot be said that it impairs a vested right to enforce the provisions of the constitution as to things done and to property created and acquired after they are in full force and effect, and after the exemption provisions of the 18th section of the internal-improvement act was thus repealed by a later constitution.

The second matter of relief sought by the bill of complaint was to recover from the defendants the sum of $140,812.47, alleged to have been paid by the Florida Railway and Navigation Company on the 28th of May, 1885, to William D. Barnes, comptroller of the State of Florida. This money, as shown by the bill, was
411 claimed by the State of Florida for taxes assessed against said Florida Railway and Navigation Company for the years 1881, 1882, 1883, and 1884. These taxes are alleged to have been paid under duress, because the State's officers, including the executive of the State, had threatened to sell the railroad of said company on account of said taxes and to put the purchaser at such sale into possession. The taxes collected are alleged to be illegal on account of the exemption of the property from taxation. The money sought to be recovered was paid to the comptroller officially and for the State for which he was acting. The recovery is not sought from the defendants individually, but from the State. We cannot enter into the merits of this portion of the controversy. The defendants in their answer denied the jurisdiction and power of the circuit court to grant this part of the relief prayed for in the bill of complaint. The court below denied the relief upon the ground that the money sought to be recovered had been "lawfully exacted and collected" by the State. The correct order would have been to have dismissed this branch of the case for want of jurisdiction to hear and determine it. The suit for this purpose, while against the two officers of the State named as defendants, was, to all intents and purposes, a suit against the State of Florida. A judgment or decree against them would be a judgment and decree against the State. A State cannot be sued without its consent. If it were admitted that the defendants, who were sued as officers of the State, could bind the State by consent to the suit, the State did not so consent in this case. On the contrary, they especially reserved "all advantage of exception * * * to the jurisdiction and power" of the court "to grant the relief" in question. The non-liability of
412 a sovereign State to be sued is a principle old, well established, and universally prevalent. Cornwall *v.* Commonwealth, 82 Va., 644; S. C., 3 Am. St. Rep., 121; Carr *v.* State, 127 Ind., 204; S. C., 22 Am. St. Rep., 624; McWhorter *v.* Pensacola & A.

R. R. Co., 24 Fla., 417; 5 South. Rep., 129; Hans *v.* Louisiana, 134 U. S., 1. By saying that the State cannot be sued it is not meant that no judicial action whatever can be taken against the State, but, confining ourselves to the facts of this particular case, that a suit like that before us, whether in the form of a bill in equity or in the nature of an action of assumpsit for the recovery of money, does not lie against the sovereign State. Opinion of Iredell, justice, in Chisholm *v.* Georgia, 2 Dall., 419. In speaking upon this subject the Supreme Court of the United States in the conclusion of its opinion in the case of Hans *v.* Louisiana, *supra*, say: "To avoid misapprehension it might be proper to add that although the obligations of a State rest for their performance upon its honor and good faith and cannot be made the subjects of judicial cognizance unless the State consents to be sued or comes itself into court, yet where property or rights are enjoyed under a contract or grant made by a State they cannot be wantonly invaded. While the State cannot be compelled by suit to perform its contracts, any attempt upon its part to violate peoperty or rights acquired under its contract may be judicially resisted," &c. It is only upon the principles announced in the two last sentences of the quotation above that the court below had jurisdiction to determine the matters involved in the other object of relief sought by the complainant beside that now under immediate consideration.

The constitution of Florida of 1885, section 22 of article III,
413 is as follows: "Provision may be made by general law for bringing suits against the State as to all liabilities now existing or hereafter originating." The nineteenth section of article IV of the constitution of 1868 was the same. No such provision having been made by the legislature, the section quoted is inoperative to change the general principles upon which we hold that the State is not liable to be sued.

The next and third object sought to be accomplished by the bill of complaint was decided in favor of the complainant below. This was the relief prayed for and granted, enjoining the collection of taxes for the years 1879, 1880, and 1881 upon certain railroads and appurtenant property of the complainant. These taxes were assessed and levied under the act of 1885, chapter 3558, Laws of Florida, page 4. Said act reads as follows: "That in all cases in which any railroad or the properties thereto belonging or appertaining in this State, in the tax years commencing March 1st, 1879, 1880 and 1881, or any of such years, were not assessed for taxes for such years, it shall be the duty of the comptroller to cause the same, or so much thereof as were not assessed, to be assessed for State and county taxes, and twenty per centum of the taxes so assessed for said years, and now unpaid, shall be collected at the same time the taxes for the year 1885 shall be assessed and collected; and each year thereafter an additional twenty per centum of said taxes shall be collected, at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid. The taxes to be assessed under this act shall be the

same in amount as they would have been had they been assessed in such years or any of them as to which there was a failure
414 to assess." The warrant issued and the levy was made, and proceedings to enforce collection of the taxes by sale of the railroads assessed were taken under the act, chapter 4073, Laws of Florida, Appendix to Revised Statutes of Florida, page 1010. This act reads as follows: "That the State and county taxes assessed by the comptroller of the State of Florida upon any railroads and the properties thereof in said State, for the years 1879, 1880 and 1881, under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads, and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment,' but which have not been collected, shall be collected, and the payment thereof enforced at the same times and in the same manner as is now or may hereafter be provided by law for the collection and the enforcement of the payment of taxes assessed upon the railroads and the properties thereof in the State of Florida. Section 2. That this act shall take effect immediately after its passage."

Various objections were made in the bill of complaint to the proceedings to enforce the collection of the taxes claimed by the State. Among other things which are insisted upon, and which it is necessary for us to determine, it was alleged, substantially, (1) that chapter 3558, above set out in full, was obnoxious to the provisions of the Constitution of the United States forbidding States to pass laws impairing the obligations of contracts, and to similar provisions in the constitution of the State of Florida; (2) that it is a special law for the collection of taxes for State and county purposes and obnoxious to the provisions of the constitution of the State of Florida; that it does not provide for a uniform assessment of all omitted property and is discriminating in the mode of payment; (3) that the act was incomplete in
415 itself, is retrospective and interfered with vested rights; (4) and it is also claimed, in effect, that at the time the predecessors of the complainant, and through whom it claims, acquired the property assessed, the years 1879, 1880, and 1881 had expired; that the taxes now sought to be collected had not been assessed against it; that the State had no lien upon it for the said taxes, and that the right of complainant to the property is superior to the claim of the State for the taxes sought now to be collected by a sale of the property; (5) it is also alleged in the bill of complaint that the exemption of railroads from taxation under the eighteenth section of the interual-improvement act enured to complainant because at the time of the purchase of the road by its predecessors through whom it claims title such exemption from taxation was the law of the property as declared by the supreme court of the State of Florida.

The greater portion of the argument of counsel for appellee, upon the alleged conflict between the act of 1885, chapter 3558, Laws of Florida, and the Constitution of the United States and of the State of Florida, is based upon the assumption that the exemption provided for by the 18th section of the internal-improvement act at-

tached to the railroad property as an incident of the same, and was a contract by the State for a continuing exemption of the property in the hands of whomsoever might acquire the same. As already stated, since the decision of the case of Louisville & Nashville R. R. Co. *v.* Palmes, in the Supreme Court of the United States, the proposition contended for has been so finally settled that it is no longer open to discussion in this State.

It is also contended by appellee that the act, chapter 3558,
416 *supra*, interferes with the vested rights claimed of exemption from taxation of the complainant's property, because those rights accrued under a judicial construction declaring that the exemption from taxation provided for in the 18th section of the internal-improvement act attached to the property as an incident without regard to changes in the ownership of the same. This contention is supported by reference to the opinions of this court in the cases of Allen *v.* Atlantic & Gulf R. R. Co., 15 Fla., 637, delivered at the June term, 1876, and Gonzales *v.* Sullivan, 16 Fla., 791, delivered at the June term, 1878. The first-mentioned case did not, but the latter case undoubtedly did, construe the act in question as claimed by appellee. Such construction continued to stand until overruled by the case of Palmes *v.* Louisville & Nashville R. R. Co., 19 Fla., 231, decided at the June term, 1882, and affirmed by the Supreme Court of the United States in Louisville & Nashville R. R. Co. *v.* Palmes, 109 U. S., 244, decided in November, 1883.

In effect, the complainant says that while it may be that the railroad property sought to be sold for the taxes for the years 1879, 1880, and 1881 was really subject to taxation in those years, yet it had been, by a mistaken construction of the law, declared not liable to taxation, and that the complainant, relying upon such construction and upon faith of the exemption from taxation, had contracted and invested its money in the property. In this case it is unnecessary to determine what effect a change of judicial decision will have upon contracts made while a former and different construction of the law prevailed. In reading the cases of Palmes *v.* Louisville & Nashville R. R. Co. and Louisville & Nashville R. R. Co. *v.*
417 Palmes, *supra*, it is evident that only one phase of the liability to taxation of the property in dispute was before the court and involved in its adjudication. The only point of nonliability decided in Gonzales *v.* Sullivan was that the exemption provided for in the internal-improvement act attached to the property and continued as an incident of it after its transfer from the original owners and builders. The more important and vital question, as to whether a corporation coming into existence since the adoption of our constitution of 1868 could hold such property as exempt, was not determined in the Gonzales-Sullivan case, nor has it ever been determined in any other case by this court. Therefore that one branch of the question had been determined in favor of the complainant's contention cannot avail it in this controversy. Of what value was it to complainant that the exemption from taxation under the statute passed with the property if it and its predecessors were such corporations as were prohibited by the constitution from holding

the property as exempt? The same contention here presented was also made in the case of Louisville & Nashville R. R. Co. *v.* Palmes. (See 109 U. S., 244, text pages 255 *et seq.*) In that case it was urged that the Louisville & Nashville Railroad Company had acquired its title after the decision of this court in Gonzales *v.* Sullivan and may be presumed to have acted upon the faith of such decision. The court, however, held the property liable to taxation, and one of the principal reasons alleged therefor was that the effect of the provisions of the constitution of 1868 upon the capacity of a corporation created after its adoption to accept the privilege and benefit of the exemption was not raised or adjudged in Gonzales *v.* Sullivan. The complainant and its predecessors, through several antecedent
418 transfers, were corporations organized since 1868 and could not avail themselves of any exemption from taxation. Louisville & Nashville R. R. Co. *v.* Palmes, *supra;* Keokuk & W. R. Co. *v.* County Court of Scotland Co., 41 Fed. Rep., 305.

Another matter is worthy of attention in considering the effect of the judicial construction of the statute from which the complainant claimed his privilege of exemption from taxation accrued. By reference to the bill of complaint and to the act (chapter 1646, Laws of Florida, Pamphlet Laws of 1868, page 143; McClellan's Digest, 1006) it will be seen (in the preamble to the act found in the original, not in McClellan's Digest) that at the time of the passage of the act, July 29th, 1868, William E. Jackson and his associates were the owners of that portion of complainant's line of railroad which extended from Jacksonville to Lake City. They had purchased the same at a sale made by the trustees of the internal-improvement fund as the property of the Florida, Atlantic and Gulf Central Railroad Company, and by the act referred to Jackson and his associates were vested with the powers and franchises granted said last-named corporation and were incorporated under the name of the Florida Central Railroad Company. Said Jackson and associates accepted such act of incorporation and in such corporate name owned and operated such line of railroad. The sixth section of said act of incorporation reads as follows: "That nothing in this act shall be so construed, nor shall it be so operative, as to divest the State of the right to make the said Florida Central railroad and all its property of every sort, character, and description the subject-matter of taxation on the part of the State." Whatever might be said as to other portions of complainant's line of road, as to which similar statutory provisions were not in existence, there could, in the face
419 of this section, be no reasonable ground for belief that this especial portion of the line was exempt from taxation. As this section had never been construed by this court, and the question of the liability of this portion of the line to taxation had not been determined, we see no reason for an assumption that a judicial construction of a statute should become a rule of property of a line of railroad, the liability of which to taxation must depend wholly or in part upon a statute which has never been construed.

The complainant says further in effect that at the time its predecessors purchased the property the taxes claimed had not been

assessed against it; that there was no lien in favor of the State for such taxes, and the act upon which the proceedings to collect taxes are being taken was not upon the statute book, and that it acquired the property free of the State's claim for taxes. It contends upon this view of the facts that its right or title to said property is superior to any claim or right of the State to subject the same to the payment of the back taxes claimed against it; that if such back taxes can be assessed and collected at all, it could only be against the owners of the property during the years for which taxes are claimed and cannot be so collected from its purchasers or by sale of the same; that if the statute intended to create a lien upon the property in the hands of purchasers for value, it would to that extent deprive its owners of their property without due process of law, and would be unconstitutional. This contention presents some complicated and difficult questions. All property in the State ought to bear its just burden of public taxation, and there can be no doubt, because it is well established by authority, that if property
420 lawfully liable thereto escapes taxation for any one or more years it is competent for the legislature to provide for the collection of such taxes in arrears. Perry and Hale Counties *v.* Selma, Marion & Memphis R. R. Co., 65 Ala., 391; Perry County *v.* Selma, Marion & Memphis R. R. Co. (and other cases), 58 Ala., 546; Tallman *v.* City of Janesville, 17 Wis., 71; North Carolina R. R. Co. *v.* Commissioners of Alamance, 82 N. C., 259; Burroughs on Taxation, 483. There is no doubt of the authority to collect such back taxes from the owners of the property during the time for which it escaped taxation or from purchasers of the same whose rights or titles accrued after a lien for such taxes had been acquired by the State by subjecting the property taxed to the payment of the same. If the State has the power to pursue property for the payment of taxes when it has ceased to be in the possession or ownership of the persons to whom it belonged during the time for which such assessment was made, in the hands of innocent purchasers for value, such power must arise from some specific charge or lien upon the property in favor of the State for the taxes thereon. The question therefore arises whether the complainant is such innocent purchaser for value. We do not think that when the time for the assessment and collection of the taxes has passed and the taxing statute affixes no lien to the property, the State has made no assessment or taken any other step to collect the same, that real estate can be pursued for back taxes when it has gone into the hands of innocent purchasers for value. The property sought to be taxed in this case is by the law of this State real estate. McClellan's Digest, § 30, p. 286, chapter 3099, Laws of Florida, act of 1879, § 2, p. 17. Under our laws, as they existed prior to the Revised Statutes, there
421 was no lien upon such property for its taxes until fixed by an assessment of the same. Spratt *v.* Price, 18 Fla., 289, text 301 *et seq.*; L'Engle *v.* Florida Central & Western R. R. Co., 21 Fla., 353. The only exception to this rule is that provided in various revenue acts, in effect, that assessors might assess real estate which had escaped taxation for any of the preceding

years not exceeding three, and that such land should be liable for such back taxes, in whosoever hands they might come. Both parties agree that this provision is not applicable to the present case. We do not think the power of the State to subject the property in question to the payment of the back taxes claimed by the State rests upon the basis of a lien upon the property which enables the State to reach it in the hands of innocent purchasers for value. We do not think, under the facts of this case, that the complainant below is shown to be an innocent purchaser for value. In other words, it does not appear that it purchased the property after the time for the assessment and collection of the taxes had passed without any assessment or other effort on the part of the State to collect such taxes. We will, as briefly as is consistent with clearness, state the facts upon which these views are announced, together with some principles of law applicable thereto.

As different portions of the property rest upon different bases of fact, we will have to separate them in such statement. First, we will examine the nature of the title of the complainant to the line extending from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks. For present purposes, it is only necessary to trace this chain of title to the acquisition of the property by Edward J. Reed and associates in September, 1879. Their
422 title was acquired at a sale on foreclosure of a statutory lien on behalf of the State against the Jacksonville, Pensacola and Mobile Railroad Company. The property was owned and operated by said Reed and associates, but under what firm or corporate name is not shown by the record until February 8th, 1882. On this date Reed and his associates organized a corporation under the general laws of the State of Florida under the name of the Florida Central and Western Railroad Company, and on the 28th of February, 1882, conveyed the property to said corporation. An inspection of these articles of incorporation on file in the office of the secretary of state of the State of Florida shows that Reed and his associates were incorporated as the same persons who had purchased the property at said foreclosure sale. This corporation, in February, 1884, was, with other companies, consolidated into the Florida Railway and Navigation Company. This latter corporation owned the property until May, 1889, and during the time the assessments complained of were made. The complainant acquired title through a purchase by one W. B. Cutting, as agent, at a judicial sale of the property; said Cutting and associates organized the complainant corporation. The complainant bought and took possession, with the assessments upon the property. We concede, however, that complainant would not be bound by such assessments if they had been illegal as against the Florida Railway and Navigation Company, its immediate predecessor. Therefore the inquiry arises whether the Florida Railway and Navigation Company was such innocent purchaser as we have hereinbefore stated could hold the property as against the State's claim for taxes. The only changes which had occurred in the ownership of the property between the time of its

acquisition by Reed and his associates in September, 1879,
423 and its assessment for taxation were by a sale by the persons organizing a corporation to the corporation composed of themselves and by a consolidation of the corporation owning it into another corporation, of which it remained a constituent part until the assessments were made. It would be defeating the State of its taxes upon the merest technicality to hold that such transfers of the property as these constituted an innocent purchaser, as the transferees, Reed and his associates, came into the ownership of the property in September, 1879. At this date the time under the then existing laws had not expired when the State might assess and collect the taxes from the property. §§ 45, 46, pp. 30, 31, Acts of 1879, chapter 3099. They took the property when it was liable to taxation for 1879 and held it while it became and was liable for the taxes of 1880 and 1881. These taxes, while not liens upon the property, were obligations due by the owners and for which the property might be made liable. Can this obligation and liability be discharged by the transfer of the property by the owners as individuals to themselves in a corporate capacity? We think not; such transfers are more nominal than real. In the case of Western Division of the Western North Carolina R. R. Co. *v.* Drew, governor, &c., 3 Woods (C. C.), 691, text 701, a question somewhat similar arose, in which it was determined that where persons holding as individuals railroad property subject to a lien passed the title to a corporation composed of themselves, clothed with corporate power, the lien was not thereby divested. 1 Morawetz on Private Corporations, § 229, thus states the same principle: "If an association of persons owning property subject to equitable claims obtains an act of incorporation the property will remain subject to these claims after it is vested in the corporate name. * * *" To
424 similar effect also is Beach on Private Corporations, § 797.

We have not been able to find a case where the precise question here involved (*i. e.*, the liability for taxes of property transferred by an association of persons to themselves as a corporation) has been adjudicated. We find a number of cases where it has been held that such a transfer would not relieve the property of liability for an indebtedness contracted by the association which afterwards became a corporation. The case of Hancock *v.* Holbrook, 40 La. Ann., 53, 3 South. Rep., 351, was a case where the stockholders of a corporation, through the medium of an individual who was not a stockholder, bought property at a judicial sale in the name of the corporation and immediately conveyed the same to a new corporation composed of the same stockholders and the individual through whom the property was purchased. The court (text, page 61), speaking upon the contention that the property in the hands of the new corporation was not liable for the debts of the company, says: "The new corporation was simply the Herald Company plus Holbrook, as evidenced by the glaring fact that its stock, except that assigned to Holbrook, was distributed without other consideration among the Herald stockholders in exact proportion to their stock therein. The proposition that the stockholders of a corporation can

buy property in its name on credit, immediately thereafter form a new corporation in which their interests are the same and based on no new consideration, transfer the property bought to the new corporation, and then holds it free from any liability to the vendor or creditors, is one which cannot be sustained in reason or by authority. It is perfectly plain that the new Picayune Company, *quoad* this property, stood in the shoes of the Herald Company and was bound for the latter's debt to the extent of its value." To similar effect also are
425 Brum *v.* Merchants' Mutual Insurance Co., 16 Fed. Rep., 140; S. C., 4 Woods, 156; Blair *v.* St. Louis, Hannibal & Keokuk R. R. Co., 22 Fed. Rep., 36; Georgia Ice Company *v.* Porter & Meakin, 70 Ga., 637. In the case of Hibernia Insurance Co. *v.* St. Louis & New Orleans Transportation Co., 13 Fed. Rep., 516; S. C., 4 McCrary, 432, upon this subject it is aptly said: "It is the duty of the court to examine the whole transaction, and to cut through mere paper transfers designed to obstruct or destroy the rights of parties. The evidence sufficiently discloses that the new corporation was a mere continuance of the old, with substantially the same parties in interest—a mere change of name. Whether that change, with attendant transfers, was designed or not to defeat all outstanding demands of the old corporation, it is evident that substantially the two corporations are the same, and that the new must respond to the obligations of the old. * * * A mere change of name cannot avoid obligations. The new corporation took all the property of the old, went forward with its business, had the same stockholders, except a few formal ones—was, in short, the old corporation, and now seeks to escape the obligations of the old, rescuing the property of the latter from the demands the former was bound to meet. Can this be done? The old corporation and its property were liable to the demands of the plaintiff. The new corporation must respond to the extent of the property acquired, and possibly to the full extent—that is, if property sufficient therefore is in its possession." The principles announced in the cases cited were in proceedings to collect debts. A tax upon property, technically speaking, is not a debt. Ordinarily an action of assumpsit and recovery of judgment does not lie thereon; yet it is an obligation to the State for which the owner and the property are liable. It is the highest obligation which
426 can rest upon property. Without the power to enforce the obligation, law and order could not be maintained, and all the functions of government would be practically suspended. We know of no reason why the rights of the State in the pursuit of alienated property subject to taxation should not rest upon as high, if not higher, grounds as the rights of an individual who seeks satisfaction of a private debt out of the same property. Respectable authority maintains the doctrine that the claim of the State for taxes is paramount to the claims of other creditors and should be first paid, and that the property might be seized by the State. This was in a case where the property had been assigned for the benefit of creditors. State *v.* Rowse, 49 Mo., 586.

The next point requiring demonstration is that the Florida Railway and Navigation Company did not become an innocent pur-

chaser by reason of the consolidation of the Florida Central and Western Railroad Company into it. This consolidation was accomplished by virtue of the statutes, § 27, p. 285, and § 37, p. 288, McClellan's Digest. The statutes under which the consolidation was made makes no provision as to the payment of the debts and liabilities of the constituent companies, which, by the consolidation, become absorbed into a new corporation. Neither does it appear by the bill of complaint or the articles of incorporation on file in the office of the secretary of state that any provision of the kind was made in such articles. In such a state of affairs all the authorities seem to agree that, unless the statutes or articles of consolidation make express provision therefor, the new corporation assumes all the debts and liabilities of the constituent companies. In the absence of express statutory provision or an assumption by agreement of the new company, the
427 debts and liabilities of the original companies follow as an incident of the consolidation and become by implication the obligations of the new corporation. Columbus, Chicago & Indiana Central R'y Co. *v.* Powell, 40 Ind., 37; Jeffersonville, Madison & Indianapolis R. R. Co. *v.* Hendricks, 41 Ind., 48; Louisville, New Albany & Chicago R'y Co. *v.* Boney, 117 Ind., 501; 20 N. E. Rep., 432; Berry *v.* Kansas City, Ft. Scott & Memphis R. R. Co., 52 Kansas, 774; 3 Wood's Railway Law, § 486; Tomlinson *v.* Branch, 15 Wall., 460; The Delaware Railroad Tax case, 18 Wall., 206; Central Railroad & Banking Co. *v.* Georgia, 92 U. S., 665. In Western Division of the Western North Carolina R. R. Co. *v.* Drew, governor, &c., 3 Woods (C. C.), 691, text 701, the court, speaking of the consolidation of two railroad companies, one of which had a lien upon its property, says: "This consolidation, by which the two companies joined their properties together, did not discharge the lien. The property of the Tallahassee Company was brought into the common concern with all pre-existing equities attaching thereto. The consolidated company having as one of its component parties the Tallahassee Company, which held subject to the lien, cannot be regarded as a *bona fide* purchaser without notice. The notice with which that company was affected, in relation to the property brought with it into the common fund, affected also the consolidated company." While we have found no case, and none has been pointed out to us by counsel, upon the express point of the liability of a consolidated corporation for the taxes due the State from one of its constituents, whose property it had received into a common corporate fund, yet there are numerous cases holding the liability of the consolidated corporation for the debts and obligations of its constituent companies.

What has hereinbefore been said as to the high degree of the
428 obligation that rests upon persons and property for taxes due the State has equal application to the present matter. A corporation from whom taxes are due the State cannot defeat the collection thereof by vesting its property subject to such taxes in another corporation, of which the defaulting corporation remains a component part.

In ascertaining the title of the complainant to the line — railroad

from Fernandina to Cedar Keys it is necessary only to go as far back as a judicial sale made in certain proceedings in the United States circuit court for the northern district of Florida in a suit between one Doggett, receiver, and the Atlantic, Gulf & West India Transit Railroad Company. The bill does not allege the date of this alleged sale, but it appears with certainty that it was before the year 1881 and probably before the year 1879. Applying that rule by which all allegations in a pleading are taken most strongly against the pleader, we are warranted in construing the bill as alleging this sale as occurring before 1879. It does not clearly appear by what corporate name the road was operated after this purchase. The property was purchased at the sale mentioned by E. N. Dickerson and C. D. Willard, who organized a corporation with the same name as that which had formerly owned it. The bill alleges that this company's name was changed in 1881 to the Florida Transit Railroad Company; but it also alleges that the company under the old (not the new) name was, in December, 1882, consolidated, with other corporations, into the Florida Transit and Peninsular Railroad Company. This last-named company was likewise consolidated, with others, into the Florida Railway and Navigation Company in February, 1884. The complainant acquired title
429 to the property at the same time in the same manner that it acquired the line from Jacksonville to Chattahoochee and its branches, and what was said in reference to the effect thereof is equally applicable to the present matter.

There is some variance as to what lines are advertised for sale, as stated in the allegations contained in the body of the bill of complaint and in the sheriff's advertisement attached to the bill of complaint and made an exhibit to and part thereof. These lines advertised by the sheriff are (1) that from Jacksonville to Chattahoochee, (2) Fernandina to Tampa, and (3) Waldo to Cedar Keys. In the bill the line is described as from Fernandina to Cedar Keys. The line leading southwest from Fernandina branches into two lines at Waldo, one of which branches leads to Cedar Keys and one leads to Tampa. The latter branch in the bill of complaint is described as several different roads built by different companies as follows: Line F, Waldo to Ocala, built in 1877 by the Peninsular Railroad Company, and line G, Ocala to Wildwood, built in 1881 by the Tropical Florida Railroad Company. These companies were consolidated in 1882 with another company into the Florida Transit and Peninsular Railroad Company. This latter company, as we have before seen, was consolidated into the Florida Railway and Navigation Company in February, 1884. The first of these lines, that from Waldo to Ocala, is liable to the payment of the taxes sought to be enforced against it for reasons already stated. The line from Ocala to Wildwood is alleged to have been built in 1881; what period of said year is not stated. Acting upon a rule of construction, already announced, we construe this allegation as showing that it was built early enough in the year 1881 to be subject to taxation for that year, and taxes for that year only can
430 be collected from it. The line K, from Wildwood to Plant City, was built in 1887, and the line M, from Plant City to

Tampa, was built in 1891. These latter lines were not in existence during the years 1879, 1880, and 1881, and cannot be taxed for years that passed away before they were built; neither can they be subjected to sale for payment of taxes due upon other railroads by reason of the accidental circumstance that they have become the property of the same corporation that owns the roads liable to taxation. The statute of 1885, under which these assessments were made, refers only to railroads which were in existence during the years named, and ought to have been assessed for taxes during those years, but were not so assessed. Several other lines of road are described in the bill of complaint, but there is no allegation or showing that they are advertised or sought to be subjected to taxes of 1879, 1880, or 1881, and we need not further discuss them.

Another objection to the proceedings to collect the taxes involved herein is that the act of 1885, under which the assessments were made, is a special law for the collection of taxes for State and county purposes and obnoxious to the provisions of the constitution of 1868, in force at the time the act was passed. The portion of this constitution with which the act is claimed to be in conflict is the provision in the seventeenth section of article IV forbidding the legislature to pass special or local laws for the assessment and collection of taxes for State, county, and municipal purposes. The eighteenth section of the same article provides that in such cases all laws shall be general and of uniform operation throughout the State.

Is the act in question a general or special law? If the
431 first, it is constitutional and valid; if the latter, it is unconstitutional and void. This court has passed upon the general question as to what constitutes a special law within the meaning of the provision of the constitution prohibiting such laws in the case of *Ex parte* Wells, 21 Fla., 280. It there held that an act providing that whenever any city or town incorporated under the general municipal corporation act approved February 4th, 1869, is indebted to the amount of two hundred thousand dollars, and has defaulted, and still defaults, in the payment of its interest account, the charter of said city or town shall be, and is hereby, declared to be repealed, and the corporation thereof dissolved, was not a special law within the prohibition of sections 17 and 18 of article IV of the constitution of 1868, but was a general law. In this case the court approved definitions previously laid down by ths supreme court of Pennsylvania as follows: "A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special, and comes within the constitutional prohibition." It might be that the railroads of the complainant is the only property affected by the act. Such a state of affairs would not make it a special law. Speaking upon a similar contention, this court has also quoted with approval, in the case of *Ex parte* Wells, *supra*, from the supreme court of New Jersey, the following language: "A law so framed" (*i. e.*, general in its terms) "is not a special or local law, but a general law without regard to the consideration that within the State there happens to be but one individual of the class or one place where it produces

effects." It has also been said, as applied to statutes, that the word general, as distinguished from special, means all of a class, instead of part of a class. 23 Am. & Eng. 432 Ency. of Law, p. 148, and authorities cited. In the case of McAunich *v.* Mississippi & Missouri R. R. Co., 20 Iowa, 338, it is said, speaking of statutes of this character: "These laws are general and uniform, not because they operate upon every person in the State, for they do not, but because every person who is brought within the relations and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation." To same effect is Iowa Railroad Land Co. *v.* Soper, 39 Iowa, 112, in which a number of cases are collated; also Coal Run Coal Company *v.* Finlen, 124 Ill., 666; 17 N. E. Rep., 11, and State *v.* Yard, 42 N. J. L., 357. The act in question is general in its terms. It embraces all of a class—all railroads in a similar condition—and is not in conflict with the Constitution.

The bill also alleges in substance that the act complained of was enacted to reach only property of the class of complainant; that other properties of large values and lands elsewhere in the State were improperly omitted from assessment for taxes for the years 1879, 1880, and 1881, and that no act has been passed to reach such property; that the act complained of does not attempt to secure a just valuation and assessment of all classes of property. These objections do not show any constitutional infirmity in the act. The fact that the statute does not embrace all classes of owners and of property omitted from taxation for the years mentioned would not, under the definitions given, make the act a special law; neither does the Constitution require that every tax act shall provide 433 for the just valuation and assessment of all classes of property. These objections apply, not to the constitutionality, but only to the policy, the justice, and the wisdom of the law. The relief from such legislation must come from the legislative, not the judicial, department of the Government. The courts are bound to uphold the statutes, unless they are clearly in conflict with the Constitution.

From what has been said herein it follows that the lines of railroad of the complainant from Jacksonville to Chattahoochee, with St. Marks and Monticello branches; the line from Fernandina to Cedar Keys, and the line from Waldo to Ocala are subject to the taxes sought to be collected from them. The line from Ocala to Wildwood is subject only to such taxes for the year 1881. The lines above mentioned, except that from Ocala to Wildwood, are the ones in existence and assessed by Barnes, comptroller, as alleged.

The decree of the circuit court holding the lines of railroad described therein as subject to taxation in 1882, 1883, 1884, 1885, and 1886, and refusing injunction against the assessment and collection of taxes thereon for 1886, and refusing to direct return of taxes paid for 1882, 1883, and 1884 by the Florida Railway and Navigation Company is affirmed except that portion which holds the line

from Ocala to Tampa subject to taxation, as aforesaid. Only that part of this latter line which extends from Ocala to Wildwood was subject to such taxation. The decree is reversed in so far as it makes subject to taxation for the years named that portion of the line from Ocala to Tampa described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to
434 Tampa. So much of said decree as holds that the statute under which the assessments were made, and under which proceedings are being taken by the defendants to collect taxes of the complainant, is a special statute for the collection of general revenue, and unconstitutional and void, is reversed. So much of the decree of the circuit court as holds that the several lines of railroad sought to be subjected to the payment of taxes herein *was* not assessable against the Florida Railway and Navigation Company for the years 1879, 1880, and 1881, and which enjoins the defendants from selling or attempting to sell the same, under the assessment aforesaid, or any part thereof, for the taxes for said years, or from in any manner interfering with or attempting to collect said taxes, is reversed. Said decree should have enjoined the collection of taxes only upon the following portions of the property so levied upon, to wit, that portion levied upon and advertised by the defendants as the line from Jacksonville to Tampa, which is described in the bill of complaint as the line from Wildwood to Plant City and the line from Plant City to Tampa. The defendants might likewise have been properly enjoined as to the taxes for the years 1879 and 1880 upon the line from Ocala to Wildwood.

(Filed March 19, 1895.)

435 In the Supreme Court of Florida, January Term, A. D. 1897.

WILLIAM D. BLOXHAM, as Comptroller, and JOHN A. Pearce, as Sheriff, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR Railroad Company, Appellee.
} Leon County.

MABRY, *J.* (after stating the facts):

After the decision of this court in this case on the former appeal (Bloxham, comptroller, *et al. v.* F. C. & P. R. R. Co., 35 Fla., 625; 17 South. Rep., 902), no decree was entered by the circuit court under the mandate sent down, but leave was granted by that court and a supplemental bill in the nature of a bill of review was filed by appellee, the complainant in the original proceedings. It becomes necessary that we now determine whether such a bill was permissible in the then status of the case under the rules of practice in courts of chancery.

A supplemental bill, says Story (Eq. Pl., § 332), is "merely
436 an addition to the original bill in order to supply some defect in its original frame or structure. In many cases an imperfection in the frame of the original bill may be remedied by an amendment. Generally a mistake in the bill in the statement of a

fact should be corrected by an amendment and not by a right statement of the fact in a supplemental bill, but the imperfection of a bill may remain undiscovered, while the proceedings are in such a state that an amendment can be permitted according to the practice of the court, or it may be of such a nature, having occurred after the suit is brought, as may not properly be the subject of an amendment. By the practice of the court no amendment is generally allowable after the parties are at issue upon the points of the original bill and witnesses have been examined, nor is it generally allowable to introduce into the bill by amendment any matter which has happened since the filing of the bill. In such cases a supplemental bill is the appropriate remedy, and such a supplemental bill may not only be for the purpose of putting in issue new matter which may vary the relief prayed in the original bill, but also for the purpose of putting in issue matter which may prove the plaintiff's right to the relief originally prayed. Whenever a supplemental bill is not a supplemental suit, but only introduces supplementary matter, the whole record constitutes but one cause, and one replication and one cause are to be set down for the hearing." Stafford *v.* Howlett, 1 Paige, 200; Straughan *v.* Hallwood, 30 West Va., 274; 4 S. E. Rep., 394; Ledwith *v.* City of Jacksonville, 32 Fla., 1; 13 South. Rep., 454. As to bills of review, this court has approvingly quoted the statement of the rule in 2 Daniell's Ch. Pl. & Pr., 1575, as follows: "The object of a bill of review, and of a bill
437 in the nature of a bill of review, is to procure the reversal, alteration or explanation of a decree made in a former suit. If the decree has been signed and enrolled, a bill of review must be filed; if not a bill in the nature of a bill of review." "A bill of this character can only be brought upon error in law appearing on the face of the decree without further examination of matters of fact, or upon some new matter which has been discovered after the decree, and which could not possibly have been used when the decree was made. If the bill is filed on the ground of error, the decree complained of must be contrary to some statutory enactment, or some principle or rule of law or equity, recognized and acknowledged, or settled by decision, or be at variance with the forms and practice of the court, but the bill cannot be maintained where the error is in mere matter of form, or the propriety of the decree is questioned." Mattair *v.* Card, 19 Fla., 455. The note to the case of Brewer *v.* Bowman, 20 Am. Dec., 158 (3 J. J. Marsh, 492), contains a discussion and review of authorities as to bills of review, their nature and scope. In the case of Putnam *v.* Lewis and Wife, 1 Fla., 455, an application was made to file a bill to review a decree in a partition suit ascertaining the interests of the respective parties and appointing commissioners to make the partition and alleged to have been duly signed and recorded. A ground of the application was newly discovered evidence since the rendition of the decree. It was conceded that a bill of review lies only after a final decree, and it was held that the decree sought to be reviewed in the case was interlocutory and not final. The court said that, the decree in this case being in-

terlocutory, a supplemental bill in the nature of a bill of
438 review would seem to be the appropriate remedy." Citing 2 Johns. Ch., 490; 2 Atk., 40, 534; 2 Vesey, Sr., 598; Mit. Pl., 71; 17 Vesey, 177.

The decision in Owens *v.* Love and Bruce, adm'rs, 9 Fla., 325, announces the rule that a bill of review lies only after final decree and not upon an interlocutory decree. It was there held that after an interlocutory decree has been enrolled the court will grant leave to file a supplemental bill, to bring forward newly discovered evidence, and grant a rehearing upon the same if the evidence is of such a nature as, were it a bill of review, would entitle the party to relief. The court said: "Had the application in this petition been but for a review reversal and setting aside said decree (being interlocutory), then the case of Putnam *v.* Lewis and Wife would be applicable, which decided that a supplemental bill in the nature of a bill of review would seem to be the appropriate remedy." The view taken in the opinion that a bill in the nature of a bill of review is not of use in this State has been disapproved. Finlayson *v.* Lipscomb, 15 Fla., 558. Supplemental bills and bills of review, the nature and scope of which are discussed by the authorities cited, have an admitted application, under a proper state of facts, to cases in the lower court, and where a case is pending or disposed of by a chancellor there is no obstacle in the way of his permitting the use of such bills in proper cases to affect his own decrees. But other considerations are involved where such bills are resorted to after the decree of the chancellor has been passed upon by the appellate court. We do not find any direct adjudication on this point in this State. In the case of Putnam *v.* Lewis and Wife and Owens *v.* Love and Bruce, adm'rs, the decrees sought to be modified had not been before the appellate court. Finlayson *v.*
Lipscomb, 16 Fla., 751, presents a case where a supplemental
439 bill in the nature of a bill of review was permitted to be filed by the chancellor after the reversal by this court of an order granting a rehearing upon the rendition of the decree and before enrollment, but we find in the opinion upon the reversal that it was pointed out that the proper remedy, if any existed, was by supplemental bill in the nature of a bill of review, and the reversal was without prejudice to an application for other appropriate proceedings. Finlayson *v.* Lipscomb, 15 Fla., 558. There is no difficulty where the appellate court expressly authorizes such proceedings.

When the bill was filed in the case of Mattair *v.* Card, 19 Fla., 455, a former decree between the same parties relating to the same subject-matter had been affirmed on appeal—18 Fla., 761—and while the professed object of the second bill was to annul and set aside the former decree, it proceeded, in total disregard of the rules applicable to bills of review, to relitigate matters supposed not to have been involved in the first suit. The court decided that a bill to procure the reversal, alteration, or explanation of a decree made in a former suit, except for fraud in obtaining it, was by bill of review, and no such fraud being shown, it was determined that all the grounds of relief set up in the second bill were involved and necessarily submitted for

consideration in the first suit. In speaking of one ground of the defense the court say: "The question whether the mortgage was valid to create a lien upon the property because of the omission of words of grant or conveyance by S. R. Mattair in the body of the instrument was necessarily submitted to the court at the hearing before the chancellor and determined, whether it was made a ground of objection at the time or not. The decree necessarily determined that the paper was a valid mortgage and directed its enforcement as such.
440 The decree was affirmed on appeal, and though the question of its sufficiency was not raised upon the appeal, the affirming of the decree places the question beyond the reach of review here." The opinion does point out defects in the bill viewed as one of review; but the question as to whether the lower court can permit, under any circumstances, a bill of review, or bill in the nature of a bill of review, to be filed to modify a decree affirmed or directed to be entered by the appellate court, either on questions of law or fact, was not considered by the court, and evidently not designed to be decided. We are of the opinion that when the supreme court on appeal affirms the decree of the circuit court or when such a decree is modified on appeal, either as to questions of law or fact necessarily involved, with directions for further proceedings consistent with the opinion, the circuit court has no authority to open the case for a new trial, or to enter any other judgment than that directed to be entered, unless authority to do so is expressly given by the appellate court. Any other rule than this seems to us to be entirely inadmissible. Sections 1277 and 1278, Rev. Stat., provide as follows, viz: "It shall be the duty of the court on an appeal or writ of error to examine the record, to reverse or affirm the judgment, sentence or decree of the court below, or to give such judgment, sentence or decree as the court below ought to have given, or as to it may appear according to law." "The appellate court may order the record of the judgment appealed from, with its decision and determination thereon in writing duly certified, to be remitted to the court from which the writ of error shall have been taken, and the said decision and determination shall be carried into execution by the officers of said court, *a quo*, or the appellate court may award execution to carry into effect its decision and determination."
441 Under this authority, and as to chancery causes it may be independent of such legislation, when the appellate court has examined the record of a cause and affirmed the decree appealed from or has modified or reversed such decree with directions as to the decree to be entered, whether the decision was on questions of law or fact, it is not the province of the court *a quo* to allow further proceedings, but the judgment or mandate of the superior court must be obeyed. We confine ourselves at present to the case of an affirmance or reversal or modification of the decree with directions for further proceedings consistent with the opinion, as it is not necessary to say what would be the effect of a mere reversal without further directions. This conclusion is sustained by the views of Chancellor Walworth in the case of Stafford *v.* Bryan, 2 Paige, 45, in which he took the view that a court of chancery can-

not entertain a bill in the nature of a bill of review upon the ground of newly discovered facts to review a decree which has been affirmed in the court for correction of errors, unless such right has been expressly reserved. *Vide* also Lyon *v.* Merritt, 6 Paige, 473. The same view was entertained by Wright, J., in Kinsell *v.* Fieldman, 28 Iowa, 497. The doctrine of the Supreme Court of the United States is in favor of the same view. The point was directly decided in the case of Southard *v.* Russell, 16 How., 547. The court said: "As already stated, the decree sought to be set aside by this bill of review in the court below was entered in pursuance of the mandate of this court on appeal in the original suit. It is therefore the decree of this court, and not that primarily entered by the court below, that is sought to be interfered with. The better opinion is that a bill of review will not lie at all for errors of law alleged
442 on the face of the decree after the judgment of the appellate court. These may be corrected by a direct application to that court, which would amend, as matter of course, any error of the kind that might have occurred in entering the decree. Nor will a bill of review lie in the case of newly discovered evidence after the publication of decree below, where a decision has taken place on an appeal, unless the right is reserved in the decree of the appellate court, or permission be given on an application to that court directly for the purpose. This appears to be the practice of the court of chancery and House of Lords, in England, and we think it founded in principles essential to the proper administration of the law and to a reasonable termination of litigation between parties in chancery suits." That court has acted on the same rule in other cases. Tyler *v.* Magwire, 17 Wall., 253; Mackall *v.* Richards, 116 U. S., 45; 6 Sup. Ct. Rep., 234; Skillern's Executors *v.* May's Executors, 6 Cranch, 267. Some text writers state that it would seem from the decision in Barbon *v.* Searle, 1 Vernon, 416, that for matter newly discovered after decree affirmed in the House of Lords a bill of review might be allowed. We have examined the case and do not see that it sustains the inference drawn. After a decree dismissing a bill had been affirmed in the House of Lords a bill was filed for discovery, and after the discovery that plaintiff might apply to the House for leave to proceed. An answer was required, but it was distinctly recognized that the decree of the Lords could not be interfered with unless they permitted the suit for that purpose, and any further proceedings than the discovery were suspended until leave was obtained. Decisions in the States of South and North Carolina and Missouri also fully sustain our conclusion. *Ex parte* Knox; *In re* Cothran *v.* Knox, 17 S. C., 207; *ibid.*, 13 S. C.,
443 496; N. C. R. R. Co. *v.* Swepson, 73 N. C., 316; Hurck *v.* Erskine, 50 Mo., 116; Chouteau *vs.* Allen, 74 Mo., 56. It is said in Greer *v.* Turner, 36 Ark., 17, that "the usual directions on remanding a cause, when this court deems it advisable to remand at all, are for further proceedings consistent with the law declared and facts found by the written opinion. This becomes the law of the case, and, as to facts found, *res judicata*. Consistently with these it is not generally intended to trammel the proper courts of original

jurisdiction by precluding them from any steps which may be within the proper scope of the suit and necessary to complete justice between the parties in reference to its subject-matter." Outside of the matters directly adjudicated, it seems in that State a plaintiff may by supplemental bill, after the return of the cause to the lower court, bring forward new matter occurring since the final submission of the cause in the circuit court. It should be conceded, we think, that decisions in Virginia, Kentucky, New Jersey, and Georgia go to the extent of sustaining the authority of the lower court to permit a bill of review on the ground of newly discovered facts without leave from the appellate court, after the case has been decided in the latter court, but the preponderance of authority is, we think, clearly the other way. In our opinion the circuit judge should have entered a decree under the mandate sent down and not permitted the case to be opened by the supplemental bill allowed to be filed. A mandate of this court should be construed with reference to the opinion delivered in the case, and from the opinion filed it will be seen that the decree was affirmed in part with modifications and reversed in part with directions in the mandate for further proceedings according to right, justice, the judgment of this court, and the laws of the State of Florida. This mandate stated the particulars in which the
444 former decree was changed, and clearly contemplated that a new and different decree should be entered than that rendered by the circuit court. We quote from the opinion in *Ex parte* Knox, in Cothran *v.* Knox, *supra*, as follows on this point: "When the judgment of the circuit court is simply affirmed, it may seem that the judgment in the cause in which it is rendered is only a judgment of the circuit court unrevoked. To reverse a judgment of the circuit court may perhaps mean something more than merely to annul or set it aside; but when a judgment of the circuit court is modified by the supreme court it is certainly a new judgment with different provisions from the circuit court judgment. While such a judgment is the final judgment in the case, it is difficult to see how it is merely the judgment of the circuit court. It is made, as in the case now under consideration, in the supreme court, and is made by an authority paramount to and which overrides the circuit court. This judgment of the supreme court is remitted, not to be reheard in, but to be enforced by, the circuit court according to law."

An appeal might have been taken from the order of the court granting leave to file the supplemental bill in the nature of a bill of review instead of entering judgment under the mandate, as should have been done, but as the supplemental bill alleges the proceedings in the former suit, including the appeal to this court, the decision, and mandate issued, it may be disposed of on demurrer, and the court should not have overruled it. We cannot sanction such a departure from precedent as was allowed by the circuit judge. This conclusion removes from consideration the merits of the bill, if it had been properly filed, and other matters discussed in the briefs.

The petition for leave to file a supplemental bill in the
445 nature of a bill of review considered in connection with the bill permitted to be filed in the lower court cannot be re-

garded as affording any sufficient ground for reviewing the judgment directed to be entered by this court under its mandate, if it had been entered, beyond the exemption of taxation in question of the line of railroad from Jacksonville to Chattahoochee. The view announced in the former opinion in this case was that when the time for the assessment and collection of taxes has passed, and the taxing statute affixes no lien on the property, and the State has made no assessment or taken any other steps to collect the same, real estate cannot be pursued for back taxes when it has gone into the hands of an innocent purchaser for value. If, as a matter of fact, as claimed in the petition filed in the lower court for leave to file the supplemental bill in the nature of a bill of review and in the bill filed, the line of road from Jacksonville to Chattahoochee went into the hands of an innocent *bona fide* purchaser before the State proceeded to collect taxes for years prior to such purchase, it would be inequitable and unjust to demand them. Whether appellee or its predecessor was such purchaser, or, if so, whether it can now avail itself of such defense, we do not now decide, as the circuit court had no authority to permit to be filed or to consider any supplemental bill in the nature of a bill of review. This court has the power in awarding a judgment on appeal, whether of affirmance or reversal, to authorize a bill of review to be filed in the lower court, and this was done in the case of Finlayson *vs.* Lipscomb, 15 Fla., 558, without any direct application for that purpose. From the consideration of that case then on appeal it appeared to the court that appellant had mistaken his remedy, if he had any, and the court reversed the decree without prejudice to resort to
446 another course which was pointed out to be a supplemental bill in the nature of a bill of review. In our opinion this court also has the power on an independent petition filed for that purpose, after a mandate on a former appeal has been issued and lodged in the lower court and a judgment entered, to grant leave to file a bill of review of the judgment entered. *In re* Gamewell Fire Alarm Tel. Co. *et al.*, 73 Fed. Rep., 908; 20 C. C. A., 111. In neither case should leave be granted to file a bill of review, as a matter of course, but the power of this court should be exerted in this direction only when in the exercise of a sound legal discretion it appears that good and sufficient grounds exist for filing such a bill. Where the application is made on the ground of newly discovered matter the questions of the materiality of the alleged new matter and laches both will arise, and this court must be satisfied that a sufficient ground exists before leave will be granted to file a bill of review of a judgment directed by it to be entered. In the present case no judgment has yet been entered under the mandate sent down in the former appeal, and the case is now before us for further directions. It is clear from the record that appellee is seeking to review the former decision made in this case, on the ground of newly discovered matter since the decision, and it is also evident from what has been said that a mistake has been made as to the proper course in accomplishing this object.

We are satisfied from the entire record before us that there is suf-

ficient shown to authorize this court to grant leave to appellee to be heard on an application in the circuit court to file a bill of review of the judgment when entered to the extent of the line of railroad and branches from Jacksonville to Chattahoochee, formerly
447 known as the Florida Central and Western Railroad Company, and after a careful examination of all that has been disclosed we are of opinion that justice requires that an order be made in this court granting permission to appellee to be further heard in the circuit court to the extent mentioned on account of the alleged newly discovered matter.

The decree overruling the demurrer will be reversed and the cause remanded with further direction that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court upon which a mandate will again issue, and an order will be entered here permitting appellee, within ninety days after the decree is entered, to apply to the circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahoochee and branches.

Ordered accordingly.

(Filed March 17, 1897.)

448 In the Supreme Court of Florida, June Term, A. D. 1900.

WILLIAM H. REYNOLDS, as Comptroller, and JOHN A. Pearce, as Sheriff, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR RAILROAD Company, Appellee.
} Leon County.

MABRY, *J.* (after stating the facts):

The record evidence in this protracted case shows that the appellee, The Florida Central and Peninsular Railroad Company, was organized under our general incorporation laws in 1888 for the purpose of owning and operating the properties of the Florida Railway and Navigation Company, a consolidated railway company, under the laws of this State. The entire properties of this latter corporation were sold in 1889 under decrees in the circuit court of the United States for the northern district of Florida, and were purchased by W. B. Cutting, as agent, and he and his associates, under the organization of the Florida Central and Peninsular Railroad Company, assumed possession of the properties so purchased. The Florida Railway and Navigation Company was formed in February, 1884, by consolidation of the Florida Transit
449 and Peninsular Railroad Company, the Florida Central and Western Railroad Company, the Fernandina and Jacksonville Railroad Company, and the Leesburg and Indian River Railroad Company. All of these consolidated lines, involved in this appeal, were constructed prior to 1868, and were entitled to the benefits of an act of the legislature of this State passed in 1855, and commonly known as the internal-improvement act. For non-com-

pliance with the requirements of this act in the payment of interest on bonds that had accrued to the internal-improvement fund by reason of its guarantee of the payment of such interest the entire lines of road now owned by appellee, but then owned by separate organizations, extending from Jacksonville to Quincy and from Fernandina to Cedar Keys, were sold in the years 1866, 1868, and 1869, and the purchasers organized separate corporations to operate them—one as the Florida Central Railroad Company, extending from Jacksonville to Lake City; one as the Jacksonville, Pensacola and Mobile Railroad Company, extending from Lake City to Quincy, including branches to St. Marks and Monticello, and one as the Florida Railroad Company (assuming the same name), extending from Fernandina to Cedar Keys. The Jacksonville, Pensacola and Mobile road extended its line by construction to Chattahoochee prior to 1873. It has always been a conceded fact that the original lines of railroad built in compliance with the requirements of the internal-improvement act prior to 1868 were entitled to the exemptions and benefits therein provided, but subsequent to the adoption of the constitution of 1868 it has not been universally admitted that the corporations subsequently organized for their ownership and control were entitled to exemptions from taxation under that constitution. It is true that the purchasers of such lines of railroad claimed the benefit of such exemption and for many years failed to pay any taxes, but the legislative branch of the State government challenged such right,
450 and in 1881 by joint resolution instructed the governor and comptroller to institute legal proceedings against the roads to test the right of exemption from taxation claimed by them. Acts 1881, page 217. The result of the litigation that ensued was adverse to the claim of such roads that the exemption provided for in the eighteenth section of the internal-improvement act was an incident of the property and followed it into the hands of purchasers under new organizations, and the roads in such hands were declared to be subject to taxation under the constitution of 1868. Palmes *v.* Louisville and Nashville Railroad Company, 19 Fla., 231; *ibid.*, 109 U. S., 244; 3 Sup. Ct. Rep., 193.

In 1885 the legislature by act, chapter 3558, provided that in all cases in which any railroads or the properties thereto belonging or appertaining in this State in the tax years commencing March 1st, 1879, 1880, and 1881, or any of such years were not assessed for taxes for such years it should be the duty of the comptroller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes to the extent and in the manner therein provided. Under this act certain lines of road now owned by appellee and involved in this appeal were assessed in 1885 by the comptroller for the years 1879, 1880, and 1881, and subsequently, in 1891, an additional act was passed, chapter 4073, to facilitate the collection of the taxes so assessed.

In November, 1892, appellee filed its bill claiming the right, as successor of the Florida Railway and Navigation Company, to recover from the State certain taxes collected from the latter company in part for the year 1881 and for the years 1882, 1883, and 1884, but this

demand was refused by the circuit court in the first instance, and the decision to this extent was affirmed by this court.
451 Bloxham, comptroller, *vs.* Florida Central and Peninsular Railroad Company, 35 Fla., 625; 17 South. Rep., 902. The bill also claimed that all of its constituent lines built under the internal-improvement act or on the routes contemplated by it were entitled to the exemption of taxation therein provided, which was an effort to reopen and relitigate the questions settled in the case of Palmes *v.* Louisville and Nashville Railroad Company, *supra*. This contention was rejected by the circuit court, and its ruling was also affirmed on the first appeal to this court. The bill had another object in view, and that was to restrain the collection of the taxes for the years 1879, 1880, and 1881 on the ground that the State legislation under which the assessments were made was unconstitutional and void. In this connection it may be stated that appellee's bill in setting up its several claims to relief in demanding a return of taxes paid by the Florida Railway and Navigation Company, and in seeking to have established its right to exemption from taxation under the internal-improvement act, detailed a history of the constituent lines of its road, and distinctly claimed to be a purchaser for value in 1889 of all the properties involved, and that its properties were not liable for back taxes assessed for years long prior to their acquisition. It claimed as purchaser of the Florida Railway and Navigation Company under judicial proceedings based upon claims of creditors and for a default in the payment of interest on mortgage bonds issued by this company to retire underlying bonds issued by its constituent companies. It was also alleged that the Florida Railway and Navigation Company had acquired its properties in 1884, before the assessment was actually made by the comptroller, and that it was not competent for the State to go beyond that year in the collection of back taxes. It appeared from the allegations of the bill that the Florida Railway and Navigation Company was formed in February, 1884,
452 by consolidation with other companies, one of which was the Florida Central and Western Railroad Company, extending from Jacksonville to Chattahoochee, and in reference to this line it is averred that under the terms of the statutory mortgage created by chapter 1716, Laws of Florida, all that portion of road between Jacksonville and Chattahoochee, including branches to Monticello and St. Marks, was sold to Edward J. Reed on the 25th day of September, 1879, under decree of foreclosure, and that Reed and his associates organized the Florida Central and Western Railroad Company, which became invested by deed from Reed, dated 28th February, 1882, with all the rights, privileges, and immunities covered by said mortgage, and of the charters and statutory benefits of the several constituent companies, but without becoming in any way obliged to pay any of the debts or obligations of any of such companies.

The circuit court sustained the contention of appellees that the act of the legislature directing the levy of the tax was unconstitutional, and enjoined the collection of the taxes for the years 1879, 1880, and

1881. On appeal this decision was reversed and the act held to be valid. Proceeding upon the theory that when the time for assessing taxes has passed and there is no statute fixing a tax lien upon property subject to taxation, and no steps have been taken by the State to collect taxes due, real estate cannot be pursued for back taxes in the hands of innocent purchasers for value, this court examined the contention of appellee that it was an innocent purchaser within the principle stated. The decision was adverse to such contention. Bloxham, comptroller, *v.* Florida Central and Peninsular Railroad Company, 35 Fla., 625; 17 South. Rep., 902. When appellee purchased in 1889 the taxes had long since been assessed and the State was proceeding to
453 collect the same. The consolidation of the Florida Railway and Navigation Company, the immediate predecessor of appellee, occurred in 1884, after the resolution of the legislature had been passed, but the decision was placed upon the ground that the consolidation of railroads under the laws of this State did not make them innocent purchasers for value, so as to exempt their property from taxes justly due thereon, but not assessed before the consolidation took place. Reed was alleged to be a purchaser at judicial sale in September, 1879, and, in connection with associates, formed the Florida Central and Western Railroad Company, one of the consolidated constituents of the Florida Railway and Navigation Company, and on such a state of facts the taxes were declared to be a valid charge on the property specified in the opinion of this court rendered at the January term, 1895. 35 Fla., 625; 17 South. Rep., 902. The decision then made on the record presented was final and left nothing for the circuit court to do except to enter a decree in compliance with the mandate sent down. Instead of doing so, the circuit court permitted a supplemental bill in the nature of a bill of review to be filed, and on appeal this bill was directed to be dismissed, as being filed without leave obtained from this court. 39 Fla., 243; 22 South. Rep., 697. It was there clearly pointed out that when the appellate court affirms or modifies a decree of a lower court, either as to questions of law or fact necessarily involved, with directions for further proceedings consistent with the opinion, the lower court has no authority to open the case or enter any other judgment than that directed to be entered, unless authority to do so be given by the appellate court.

In view of what was disclosed in the petition and supplemental bill in the nature of a bill of review in reference to that por-
454 tion of appellee's line of road from Jacksonville to Chattahoochee, this court was constrained to grant appellee leave to be heard by the circuit court on an application for leave to file a bill of review on newly discovered evidence to the extent of the line mentioned, and an order was made to this effect. On petition filed for that purpose the circuit judge granted leave to file a bill to review not only that portion of the decree affecting the line of road from Jacksonville to Chattahoochee, but other portions of the road, and not only on the ground of newly discovered evidence, but for errors of law apparent on the record and alleged to have been committed by this court. This was entirely beyond the scope of the

permission given by this court, as the circuit court had no jurisdiction or authority to permit the decree to be reviewed to any extent beyond that affecting the line from Jacksonville to Chattahoochee, and to this extent only upon the ground of newly discovered evidence. This was clearly pointed out in the decision on the prohibition proceedings reported in 40 Fla., 297; 24 South. Rep., 160.

It appears from the record before us that, notwithstanding the decision referred to, the bill permitted to be filed remained unaltered and the court proceeded on final hearing to deny the relief asked as to other matters not affecting the line of road from Jacksonville to Chattahoochee. In this respect no relief was granted to appellee, but it is entirely clear from what this court has already decided in this case that the action of the court in undertaking to decide anything affecting the decree directed to be entered by this court beyond the permission granted was improper and without authority. What the court undertook to decide beyond the scope of the permission granted is void and must be regarded as forming no part of the case. The court should never have entertained an application to review any por-
455 tion of the decree beyond the leave granted by this court, and after the decision on the prohibition proceedings the pleading should have been reformed so as to confine the allegations to the matters authorized to be investigated. The decree as to all other matters had long before become a finality, not subject to be disturbed by even this court, and the contention made here by counsel for appellee that the present appeal opens up the entire case from the beginning is so groundless as to merit no consideration. An appeal from a chancery decree under our system opens up the case for review in the appellate court, but the present case has already been before this court on appeal and a decree directed to be entered by the lower court, with permission to apply to that court for leave to file a bill to review only a part of the decree when entered on the ground of newly discovered evidence. To the extent of the permission given the parties had a right to be heard before the circuit court, and its action in reference to such is subject to review, but the decree in all other respects was final when entered, and must be so regarded. The enquiry, therefore, on this appeal must be confined to the action of the court in reference to the permission to file, or the sustaining of the bill filed, to the extent of the line of road from Jacksonville to Chattahoochee on the ground of newly discovered evidence.

After the entry of a final decree parties cannot, as a matter of right, file a bill of review on the ground of newly discovered evidence. Leave of the court to file the bill must first be obtained, and the granting of such leave rests in the sound discretion of the court. The regular chancery practice recognizes a petition to the court in which the final decree is entered as the proper procedure to obtain leave to file such bill. The showing to be made on this ap-
456 plication, including the character of the evidence, its discovery, and the required diligence in reference thereto, has been considered by this court in the cases of Owens *v.* Adm'r of Forbes, 9 Fla., 325, and Finlayson *v.* Lipscomb, 16 Fla., 751, and we

will not, in this connection, repeat what was then said. Under our laws the preliminary action of the court in granting leave to file the bill on the ground of newly discovered evidence is subject to revision by the appellate court. The appeal in the case of Owens *v.* Forbes was from an order granting leave to file a supplemental bill in the nature of a bill of review, and the court said it was authorized by the act of the legislature of January 7th, 1853. This act, in reference to the right to appeal, is the same as section 1457, Revised Statutes, and authorizes appeals from any interlocutory order, decision, judgment, or decree of the circuit courts when sitting as courts of equity. In the case of Finlayson *v.* Lipscomb this court reviewed and reversed the action of the lower court in granting leave to file a bill of review after demurrer to the bill permitted to be filed. It must, therefore, be accepted as settled with us that the right to object to the court's action in permitting the bill to be filed is open to the party against whom it is presented. In the present case we do not determine whether the court erred in permitting the bill of review to be filed on the showing made for that purpose, as the decree rendered on the bill must be reversed on a point arising thereunder, even if we were to concede that leave to file the bill was properly granted.

We deem it proper to say, in view of the contention made here by counsel for appellee, that the permission given by this court to apply to the circuit court for leave to file a bill of review simply left appellee free to do so. The application, if made, was to be
457 judged of by the lower court under the rules applicable to such matters. This court was induced to grant the permission from what appeared on the record before it, but it did not undertake to determine the sufficiency of an application that might be made to a court that was required to exercise its judicial discretion in reference thereto in the first instance.

The bill of review for newly discovered evidence must allege that it is filed by leave of the court, must state the former bill and proceedings, including the final decree entered and the particulars in which the party conceives himself aggrieved, and it must also state distinctly and specifically the evidence alleged to be discovered and that it came to the knowledge of the party after the final decree was entered, or too late to be used at the hearing, and that by the exercise of reasonable diligence it could not have been discovered sooner. "The newly discovered evidence must be relevant and material and such as might probably have produced a different determination. The new matter must have first come to the knowledge of the party after the decree. The matter must not only be new, but it must be such as the party, by the use of reasonable diligence, could not have known. It must not be merely cumulative, nor merely corroborative or auxiliary to what is already in the case, but must establish a new fact of itself decisive of the merits of the cause." Owens *v.* Forbes, *supra*. The requirements stated by this court in the case referred to are enforced by the authorities generally, in text books and adjudicated cases, and they are material matters not only to be alleged but established by proof. The ordinance

of Lord Bacon that is the basis of all the law on this subject is even more rigid in its requirements than the rule laid down in this court. 2 Barb. Ch. Pr., page 91. There is a decision
458 in Maryland (Hodges *v.* Mullikin, 1 Bland's Ch. Rep., 503) to the effect that in an application for leave to file a bill of review on the ground of newly discovered evidence the question of the new discovery must then be traversed and finally determined and not left open for the bill itself, but this decision has not been followed by other courts. The authorities are practically unanimous in holding that after the bill of review is filed it may be demurred to for sufficient reasons, or answered, and an issue made on the allegations therein. This was the view of Judge Story in Dexter *v.* Arnold, 5 Mason, 303, referred to with approval in the decision of this court in Owens *v.* Forbes, and was expressly so held in Elliott *v.* Balcom, 11 Gray, 286. See also the following authorities: Mitford's & Tyler's Pl. & Pr., 186; 2 Daniell's Ch. Pl. & Pr. (6th Am. ed.), 1584; Story's Eq. Pl. (10th ed.) §§ 420, 834; 2 Barb. Ch. Pr., 99; Mattair *v.* Card, 19 Fla., 455; Lewellen *v.* Mackworth, 2 Atkins, 40; Jenkins *v.* Prewitt, 5 Blackf., 7; Burson *v.* Dosser, 1 Heisk., 754; Carter *v.* Stennet, 10 B. Monroe, 250; Greer *v.* Turner, 47 Ark., 17; 14 S. W. Rep., 383; Bartlett *v.* Gregory, 60 Ark., 453; 30 S. W. Rep., 1043; Ketchum *v.* Breed, 66 Wis., 85; 26 N. W. Rep., 271; Nichols *v.* Heirs of Nichols, 8 West Va., 174; Buffington *v.* Harvey, 95 U. S., 99.

The right to have a decree regularly made and entered reviewed on the ground of newly discovered evidence depends essentially upon the fact that the new evidence came to the knowledge of the party after the decree was made and could not, by the use of reasonable diligence, have been earlier discovered. This fact constitutes an essential equity in the maintenance of a bill, and must be proven when put in issue. Alder *v.* Vankirk Land and Construction Co., 114 Ala., 551; 21 South. Rep., 490. The new matter alleged in the present bill to have been newly discovered after the final hearing is that during the entire time
459 between September, 1879, and February 28th, 1882, the period for which the taxes involved were assessed, a company known as the Jacksonville, Pensacola and Mobile Railroad Company owned the line of road from Lake City to Chattahoochee, with branches to St. Marks and Monticello, and from September, 1879, until the sale of this road and its confirmation, it was in the hands of receivers appointed by the United States court, and that the purchasers of this road, Jackson, Symonton, and Engler, conveyed the same to Edward J. Reed, who, before this date, did not own, possess, or receive the income arising therefrom; that the portion from Lake City to Jacksonville was owned and possessed by the Florida Central Railroad Company prior to January, 1882, when it was purchased by Reed, who, after the confirmation of its sale soon thereafter, became for the first time possessed and interested therein. The answer sworn to by both defendants, as required by the bill, denies this allegation and expressly puts in issue that this matter was discovered for the first time after the hearing, or by the exercise of reasonable diligence could not have been discovered before then, and the parties went to trial on this issue.

The bill further alleges that the foreclosure proceedings, judicial sales, receiverships, and transfers of the said several lines of road were had in the circuit court of the United States for the northern district of Florida, where all the papers relating thereto were kept, and that before filing the original bill the court-house building where such records were kept, together with such records, was destroyed by fire, but this is not alleged to be a newly discovered fact for the first time after the original hearing in the case. In our opinion it is not shown that appellee by the exercise of reasonable diligence could not have discovered for the first time the alleged new matter before the original hearing in this case, and that to sustain the decree rendered on this point would violate the rules
460 laid down by all the courts on the subject. Some decisions reject the evidence of new witnesses entirely, but where such evidence is accepted the authorities hold that it should be done with great caution and only when it is of such a nature as to amount to decisive proof. This is necessary to guard against an improvident reopening of matters already settled in a due course of investigation and to avoid the oppression of protracted litigation. That Edward J. Reed was a purchaser of the line of road from Jacksonville to Chattahoochee at judicial sale was known to appellee when the original bill was filed, as this fact is stated therein, and the importance of ascertaining when this purchase was made should have been known, if it was not. Philip Walter was clerk of the United States court for the northern district of Florida, and continued as such until after the filing of the original bill. His office was in this State and accessible to appellee and its agents. It is shown that this clerk was master in the foreclosure proceedings resulting in a sale of the property acquired by Reed, and was familiar with all the facts in reference to the foreclosure sales of the line of road in question. In fact, this clerk had in his possession after the destruction of the records by fire, and even at the time he testified in the case, a copy of the foreclosure proceedings and could have imparted to appellee or its agents correct information as to all matters alleged to be newly discovered. There is an entire absence of showing that any inquiry was made by appellee or its agents of this clerk for information in reference to the dates and facts connected with the sales of the road, and no reason is assigned why this is not done. When it becomes necessary to rely upon important facts established in judicial proceedings, a resort to offices where such proceedings were had for information is demanded by ordinary business prudence, and a failure to so search for information can only be attributable to negligence.
461 Dumont *v.* Des Moines Valley R. R. Co., 131 U. S., Appendix, clx. A knowledge of the destruction of such records by fire would naturally suggest an inquiry of the custodian before destruction whether they had been re-established or what information he could impart of their contents. If it had been shown that a resort was had to the clerk and he misled the parties in reference to contents of records, and on account of their destruction by fire no means were accessible to correct the mistake, a different case might exist, but no showing of this kind is attempted. It does not appear

that appellee made any search in any office where information could have been obtained in reference to the matters alleged to have been newly discovered, and no effort was made, so far as the testimony shows, to communicate with Reed, the alleged purchaser of the road, in reference to the important fact of when he became purchaser. It also appears that the original bill was signed by the corporation, by its vice-president, who also signed the bill as counsel. The testimony shows that the vice-president was counsel for the receivers of the road from Lake City to Chattahoochee from 1879 to 1882. One of the receivers, it appears, died before the bill was filed and the other had removed to North Carolina, but it does not appear that the one in North Carolina had been written to or in any way communicated with in reference to the facts connected with Reed's purchase. The receivers, it also appears, acted as masters in the sale of the road. Counsel insist that knowledge of an attorney acquired before he becomes employed in connection with litigation is no notice to the client who subsequently employs him, and that Vice-President Henderson's information, acquired as attorney for the receivers, cannot be imputed to appellee. The question involved in this case is not the tracing of knowledge to appellee, but the use of reasonable diligence by it in obtaining evidence in the case.

462 As stated by Lord Eldon, the question is "not what the plaintiff knew, but what, using reasonable diligence, he might have known." Young *v.* Keighly, 16 Vesey, Jr., 348.

The petition for leave to file the bill of review and the bill filed were signed by the company, by its president, and they were also sworn to by him. The only testimony introduced to sustain the bill of review in reference to the exercise of diligence in discovering the alleged new matter was that of President Duval, and his testimony entirely fails to show that the vice-president and counsel of the company used any diligence whatever in trying to obtain the supposed new matter, and the latter has nothing whatever to say on the subject. No acts of diligence are attempted to be shown by any agent of the company. We have carefully examined the evidence, and without further special reference to it state our conclusion that it fails to show that the new matter alleged was not known or could not by the use of reasonable diligence have been known to appellee or its agents in time for use before the hearing of the cause. In the absence of such showing, it is impossible to sustain the decree without going contrary to well-settled rules of law on the subject. It therefore becomes unnecessary to examine further whether the new matter did exist or its character and effect.

The decree of the court enjoining the sale for the taxes assessed for the years 1879, 1880, and 1881 on the line of appellee's road from Jacksonville to Chattahoochee and branches is reversed and the bill of review is dismissed with costs against appellee. Judgment will accordingly be entered in this court dismissing the bill.

(Filed June 26, 1900.)

463 In the Supreme Court of Florida, June Term, A. D. 1900.

WILLIAM H. REYNOLDS, as Comptroller, and John A. Pearce, as Sheriff, Appellants,
vs.
THE FLORIDA CENTRAL AND PENINSULAR Railroad Company, Appellee.
} Leon County.

TAYLOR, *C. J.* (dissenting):

I cannot concur in the conclusion reached by the majority of the court in this case. In the majority opinion it is stated that the question of the propriety or impropriety of the order of the court below granting leave to file the bill of review is not passed upon or determined, and yet, according to my view, the reversal of the decree appealed from is planted solely upon the ground that the showing made for leave to review the former decree does not come up to the rule in such cases; that diligence was not shown to have been used in the discovery of the new matter made the groundwork of the application. The merits of the case as involved in the bill of review filed and in the new proofs adduced in support thereof, aside from the question of diligence, are not considered, but the reversal is based solely upon
464 what, in my view, is purely a preliminary question in all such cases affecting only the right to the necessarily precedent order granting leave to file a bill of review, and the effect of the opinion of the majority is to adjudge that the circuit judge erred in granting leave to file the bill of review because diligence was not shown in the discovery of the new matter set up in the application therefor. The record before us shows that the application for leave to file the bill of review was by petition to the court below, and that the order granting such leave was made after notice to the opposite party, who appeared by counsel at the hearing of such application. No objection by answer, demurrer, or otherwise appears by the record to have been made to the passing of the order granting leave to file the bill of review, but the appellants saw proper apparently to waive any objection to the granting of such order on the showing made in the application therefor, and in their formal answer to the bill of review when filed attempt to raise the question of diligence in the discovery of the new matter set up therein. In my view the question of diligence in such cases affects solely the question of the right of the party to the prerequisite order granting leave to file the bill of review, and, like such order, is necessarily a preliminary question that must be adjudicated before the bill of review itself is filed, and it ceases to be a material question in the case after the formal order is made granting leave to file such bill. The appellants having stood by and permitted the order to be made granting leave to file this bill of review, without interposing any apparent objection thereto, admitted the right of the appellee to have such review, and waived all defects and shortcomings in the application therefor, including the question of diligence and all other questions upon which the right to such review depended, and it was too late for them afterwards to reinterject it into the case in the form of an
465 answer to the bill of review itself. Hodges *v.* Mullikin, 1 Bland's Ch., 503. This being true, I think that this court

is confined in its review to the merits of the case as disclosed in the new matter brought to light by the bill of review. What is that new matter? That the line of road from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, though sold at judicial sale in September, 1879, to Reed and associates, did not go into their possession or control as a consummated purchase until 1882, but until the last-named date remained in the custody of the court, under whose order the sale was made, in the hands and control of such court's receivers, and that the said purchase was made at the sale in September, 1879, was not completed by confirmation thereof by the court making it until 1882, when Reed and his associates became *bona fide* purchasers, for valuable consideration then paid, without notice of any tax lien upon said line of road for the years 1879, 1880, and 1881, and I think that the proofs offered in support of the above new matter fully sustains its truth, with no contradiction save the unsupported denials of the answer. Under these circumstances, according to the former decision of this court in the case, 35 Fla., 625; 17 South. Rep., 902, neither the appellee nor the said line of road in its hands are chargeable with the taxes for said last-named years assessed under an *ex post facto* statute enacted subsequently to their becoming such purchasers. The great State of Florida cannot, in my view, afford to perpetrate such an injustice upon innocent purchasers of property within her borders for the sake even of rigid adherence to and enforcement of a technical rule of practice in her courts.

(Filed June 26, 1900.)

466 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages, numbered from four hundred and two (402) to four hundred and sixty five (465), inclusive, constitute true copies of the head-notes and opinion of said supreme court filed March 19, 1895, and of the opinion of said supreme court filed March 17, 1897, and of the opinion of said supreme court filed June 26, 1900, and of the dissenting opinion of Taylor, C. J., filed June 26, 1900, in the case of William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, appellants, and The Florida Central and Peninsular Railroad Company, appellee, as the same appear upon the files of my office.

Seal Supreme Court of the State of Florida.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, this 25th day of October, A. D. one thousand nine hundred.

B. B. WILSON,
Clerk Supreme Court, State of Florida.

Endorsed on cover: File No., 17,948. Florida supreme court. Term No., 463. The Florida Central and Peninsular Railroad Company, plaintiff in error, *vs.* William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county. Filed October 29, 1900.

No. 183.

FILED
NOV 1 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 463.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, FLORIDA.

ON WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

MOTION FOR RESTRAINING ORDER OR SUPERSEDEAS.

Now comes the plaintiff in error, The Florida Central and Peninsular Railroad Company, by its attorneys, and moves this honorable court to issue a restraining order or other appropriate writ to restrain the sale at public auction of a certain portion of the road-bed, tracks, and other properties of

the above named plaintiff in error pending the final disposition of this cause, said properties now being advertised for sale on Monday, November 5, A. D. 1900.

As ground for said motion, plaintiff in error respectfully shows that heretofore it filed its bill of complaint in the circuit court of the second judicial circuit of the State of Florida to enjoin the comptroller of that State and the sheriff of Leon county, in said State, from making any levy on or sale of the property composing the lines of your orator's railroad in said county on account of any assessments for taxes laid thereon for the years 1879–1881, inclusive, and to prevent their executing or attempting to execute any warrants of sale issued under such assessments, it being contended by your orator in said court that the properties in question were exempt from taxation during said years by virtue of the then existing laws of the State, and that any attempt to assess and levy taxes thereupon for said years under the provisions of a subsequently enacted statute (Act of 1885, ch. 3558, Laws of Florida) was unconstitutional.

The matter having come on to be heard, said circuit court found that the statute of 1885, under which the assessments were made for the years above mentioned, was a special statute for the collection of general revenue and did not provide nor attempt to provide an uniform, equal, and just assessment for the collection of taxes, and as to the properties of your orator was unconstitutional and void, and the defendants were accordingly enjoined as prayed.

From this decree of said circuit court an appeal was prayed to the supreme court of Florida, and it was there, on the 26th day of June, A. D. 1900, reversed by the concurrence of two

of the three judges who sat in review, the chief justice diissenting.

To review this decree of reversal so rendered a writ of error was sued out from this court, and the same was perfected on the 24th day of October, 1900, by the filing of a bond for costs in the penal sum of $1,000.

Pending the disposition of the cause by this court, the defendants in error have advertised the properties of your orator for sale under the assessments and levies in the billl of complaint complained of, and unless restrained by the order of this honorable court, will proceed to sell the same on Monday next, the 5th day of November, A. D. 1900, to the great damage and detriment of your orator.

JOHN A. HENDERSON,
FREDERIC D. MCKENNEY,
Attorneys for Florida Central and Peninsular Railroad Company.

WAYNE MACVEAGH,
Of Counsel.

No. 463. 1899.

Office Supreme Court U.S.
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NOV 1 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 463.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, FLORIDA.

ON MOTION FOR RESTRAINING ORDER OR SUPERSEDEAS.

1.

(WESTERN UNION TELEGRAM.)

TALLAHASSEE, FLA., *October* 30, 1900.

Hon. JOHN A. HENDERSON, *Richmond, Va.:*

I have no objection to consideration of matter of bond by U. S. S. C. in F. C. & P. tax suit on next Thursday.

W. B. LAMAR,
Attorney General.

2.

(WESTERN UNION TELEGRAM.)

TELLAHASSEE, FLA., *Oct.* 31, 1900.

Hon. JAS. H. MCKENNEY, *Clerk:*

Have wired Col. J. A. Henderson that I do not object to application to the U. S. Supreme Court on tomorrow for fixing supersedeas bond in F., C. & P. R. R. tax-sale case, but I desire hereby to call attention of the court to the fact that the sum of ninety-six thousand dollars is involved in the litigation. Can you present this telegram to the court in an informal way? If so, wire me at my expense.

W. B. LAMAR,
Att'y Gen'l.

No. 183

FILED
JAN 25 1901
JAMES H. McKENNEY,
Clerk.

Br. of McKenney, MacVeagh and Henderson for P. C. (mo

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Jan. 25, 1901.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

T. L. CLARKE,
FREDERIC D. McKENNEY,
Attorneys for Plaintiff in Error.

WAYNE MACVEAGH,
JOHN A. HENDERSON,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-25-'01

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 463.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

STATEMENT.

This suit was instituted by the Florida Central and Peninsular Railroad Company, the present owner of various constituent railroad companies and their properties and assets, as detailed in the record, in the circuit court of the State of Florida for the county of Leon on the 2d day of November, 1892.

The proceeding was by a bill in equity for the purpose, among other things, of enjoining the comptroller of the State and the sheriff of Leon county from collecting taxes levied upon certain railroad properties of the complainant for the years 1879, 1880, and 1881 under an assessment made by virtue of an act of the Florida legislature approved February 12, 1885, and a further act of said Legislative Assembly approved June 8, 1891, the properties in question having come into the possession or under the control of said complainant and its privies subsequent to the year 1881 and prior to February, 1885, without notice that the taxes for the years 1879, 1880, and 1881 had not been paid, no assessment for such taxes having been levied and no lien therefor existing at the time of the acquisition thereof.

The acts of the State of Florida referred to are as follows:

"*Laws of Florida*, 1885, *Ch.* 3558.

"AN ACT to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment.

"*The people of the State of Florida, represented in senate and assembly, do enact as follows:*

"SEC. I. That in all cases in which any railroad or the properties thereto belonging or appertaining in this State, in the tax years commencing March 1st, 1879, 1880 and 1881, or any of such years were not assessed for taxes for such years, it shall be the duty of the comptroller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes, and twenty per centum of the taxes so assessed for said years and now unpaid shall be collected at the same time the taxes for the year 1885 shall be assessed and collected, and each year there-

after an additional twenty per centum of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid.

"The taxes to be assessed under this act shall be the same in amount as they would have been had they been assessed in such years or any of them as to which there was a failure to assess.

"Approved February 12, 1885."

"*Laws of Florida*, 1891, *Ch.* 4073.

"AN ACT to provide for the collection of taxes assessed under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment, being chapter 3558, Laws of Florida.'

"*Be it enacted by the legislature of the State of Florida:*

"SECTION I. That the State and county taxes assessed by the comptroller of the State of Florida, upon any railroads and the properties thereof in said State, for the years 1879, 1880 and 1881, under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads, and the properties thereof for the years 1879, 1880 and 1881, as to which there was no assessment' but which have not been collected, shall be collected, and the payment thereof be enforced at the same time and in the same manner, as is now, or may hereafter be provided by law, for the collection and the enforcement of the payment of taxes assessed upon the railroads and properties thereof in the State of Florida.

"SECTION II. That this act shall take effect immediately after its passage.

"Approved June 8, 1891."

The complainant, by its bill of complaint, among other things, averred that the lines of railroad track and properties sought to be taxed, as aforesaid, had been constructed by its predecessors in title upon the faith of certain grants and exemptions guaranteed by prior existing law to any persons or companies who should construct lines of railway between certain points in the State of Florida, the statute laws referred to being known as the Internal Improvement Act of Florida, chapter 610, of the Laws of Florida, approved January 6, 1855, said statute being in full accord with the then existing constitution of said State which authorized and directed the legislature to provide for and encourage a liberal system of internal improvements.

Complainant further averred that neither said Internal Improvement Act nor the act incorporating the companies that built the lines of railway in question reserved to the legislature any right to alter or amend or repeal said acts, nor was there any other prior law then in force which authorized such repeal, alteration, or amendment, nor was there any law applicable to said railroads inconsistent with the provisions of said Internal Improvement Act or with said acts of incorporation with regard to taxes on railroad property and exemptions therefrom, and further that the provisions of the constitution of Florida adopted A. D. 1868, to the effect that no railroad property should thereafter be exempted from taxation, and the acts of the Florida legislature above quoted under which it was attempted to collect taxes for the years 1879, 1880, and 1881 from complainant, as the present owner of the properties in question, were "INCONSISTENT WITH THE CONSTITUTION OF THE UNITED STATES, in that it sought to deprive the companies

then owning the property now belonging to the complainant of vested contract rights to such exemption, and that said State constitution abrogated the contract at that time in force between the State and said railroad companies and illegally impaired the obligations imposed thereby upon the State of Florida, and is therefore null and void," such exemptions being part and parcel of the property value of said constituent railroad properties.

And further, that the complainant and its bond and stockholders, by virtue of the various acts of consolidation and other proceedings entered into by and between the various constituent companies and individuals owning the same, became from the date of such consolidation "*bona fide* holders of property interests in each of said constituent properties, which interests were then acquired, subject to the laws of such property as they then existed and entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property." * * * "Wherefore it (complainant) says that any and every act of the State of Florida, either through amendment of its constitution or by act or resolution of its legislature in so far as it was thereby attempted to revoke, repeal or annul the said exemption from taxation, WAS IN VIOLATION OF THE RIGHTS OF YOUR ORATOR AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES, which does not permit vested rights under previous contracts to be impaired by subsequent enactments" (Bill of Complaint, R., pp. 5, 8, 9, and 10).

The defendants, answering, denied that the State constitution of 1868 was INCONSISTENT WITH THE CONSTITUTION OF THE UNITED STATES OR ABROGATED ANY CONTRACT IN FORCE

BETWEEN THE STATE AND THE RAILROAD companies, as set forth in the bill of complaint, and claimed that "the alleged grant of exemption, if made, was made gratuitously and without consideration, and if there was any consideration it was not such a consideration as to preclude the people and their legislature by their subsequent organic act and legislation from subjecting the complainant and consolidated companies "to the same burdens as are imposed upon other corporations or natural persons who enjoy the benefits of State and county governments," and more to like effect (Answer, R., pp. 26–29).

The Federal question thus raised by the original bill and answer was preserved throughout the subsequent stages of the case, and was repeated and enlarged upon both in the Supplemental Bill in the nature of a Bill of Review (R., p. 56) and the Bill of Review subsequently filed at the suggestion and by the permission of the supreme court of the State (R., pp. 143, 147, *et seq.*).

The circuit court for Leon county sustained complainant's contention that the act of the legislature directing the levy of the tax was unconstitutional and enjoined the collection of the taxes for the years 1879, 1880, and 1881 (R., p. 40). On appeal this decision was reversed by the supreme court of the State on March 19, 1895, and "the cause is remanded for further proceedings in accordance with the opinion of the court filed herein" (R., p. 45).

In the course of the "further proceedings" complainant was permitted by the trial court to file a Supplemental Bill

in the nature of a Bill of Review (R., p. 55), to which defendants demurred, and the demurrer having been overruled by the trial court, they took an appeal to the supreme court of the State (R., p. 63), which court on March 17, 1897, reversed the action of the trial court and remanded the cause "with further directions that the circuit court dismiss the Supplemental Bill in the nature of a Bill of Review and enter a final decree in accordance with the former judgment of this court *upon which a mandate will again issue;* and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a Bill of Review," &c., &c. (R., p. 66), and the mandate of said supreme court was accordingly issued, bearing date of May 22, 1897 (R., p. 68).

In accordance with the permission above recited, the complainant, by leave of court, filed its Bill of Review on September 18, 1897 (R., p. 142), wherein the claims of protection under the Constitution of the United States first above recited were reiterated (R., pp. 147, 151, 152, 180) and the pertinency of such claims was denied by defendants.

The cause having come on for hearing and final decree upon the pleadings and depositions, the circuit court, on January 6, 1900, entered its final decree, again enjoining the collection of the taxes in question for the years 1879, 1880, and 1881 (R., p. 215), from which decree the defendants in error prayed a further appeal to the supreme court of the State, where that decree was reversed on the 26th day of June, 1900 (R., p. 222).

To review this judgment of the State supreme court passed on the 26th day of June, 1900, a writ of error from

this court was prayed for and allowed October 24, 1900 (R., p. 223), and the transcript of record was filed in this Court October 29, 1900.

ARGUMENT.

The foregoing statement would seem to render further reply to grounds numbered First and Second of defendant's motion unnecessary.

That a Federal question was raised by the pleadings at the very inception of the case is too plain for discussion. Such question involved the invalidity, under the Constitution of the United States, of certain provisions of the State constitution and statutes, and the decision of the State supreme court was in favor of their validity, the chief justice of the State dissenting from the view of his associates (R., p. 262).

That the writ of error was sued out in time would seem to be equally plain.

The decree of June 26, 1900 (R., p. 222), was the only *final* decree entered in the cause which could have been reviewed here.

If we are right in the above suggestions, there is left but the Third and last ground mentioned in plaintiff in error's motion, viz., that although the record in the cause may disclose jurisdiction on the part of this court, yet it is manifest that the writ of error was sued out for delay merely. In view of the fact that the circuit court by each of its two decrees granted the relief prayed for by complainant's bill,

and that the chief justice of the State concurred in that view, it can hardly be said that the suing out of the writ of error from this court to review the validity of tax assessments aggregating almost $100,000 was "manifestly" for purposes of delay; nor can it be said that the Federal question involved was so clearly decided rightly that the writ of error should be dismissed as frivolous.

A casual comparison of the transcript of record in the case at bar with the report of the case of Railroad Company *vs.* Palmes (109 U. S., 244), relied upon by the defendant in error, will, while disclosing some points of similarity, also disclose marked and essential differences. For example, in the Palmes case the statute under review was entitled "An act for the assessment and collection of revenue," approved March 5, 1881, while in the case at bar the acts complained of were passed in 1885 and 1891 respectively, and were aimed at the assessment and collection of taxes on a certain class of properties for prior specified years for which no assessments had been levied and no lien existed.

In the case at bar much stress is laid upon the inherent contract rights of *bona fide* holders for value who had purchased in the absence of knowledge of the fact that the taxes in question had not been paid, and with respect to whom the acts of the legislature complained of were clearly retroactive. In the Palmes case no mention is made of *bona fide* holders for value, and no claim for relief is based upon the assertion of that principle.

Other essential differences might be pointed out, but it is submitted that the above is sufficient to remove this case

from the supposed domination and control of the Palmes case.

Upon the whole, it is submitted that the motion to dismiss or affirm should be denied.

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22505

No. 183.

Brf. of Clarke, J. Kenney, Mac Henderson for P.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Nov. 5, 1901.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALONZO C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR.

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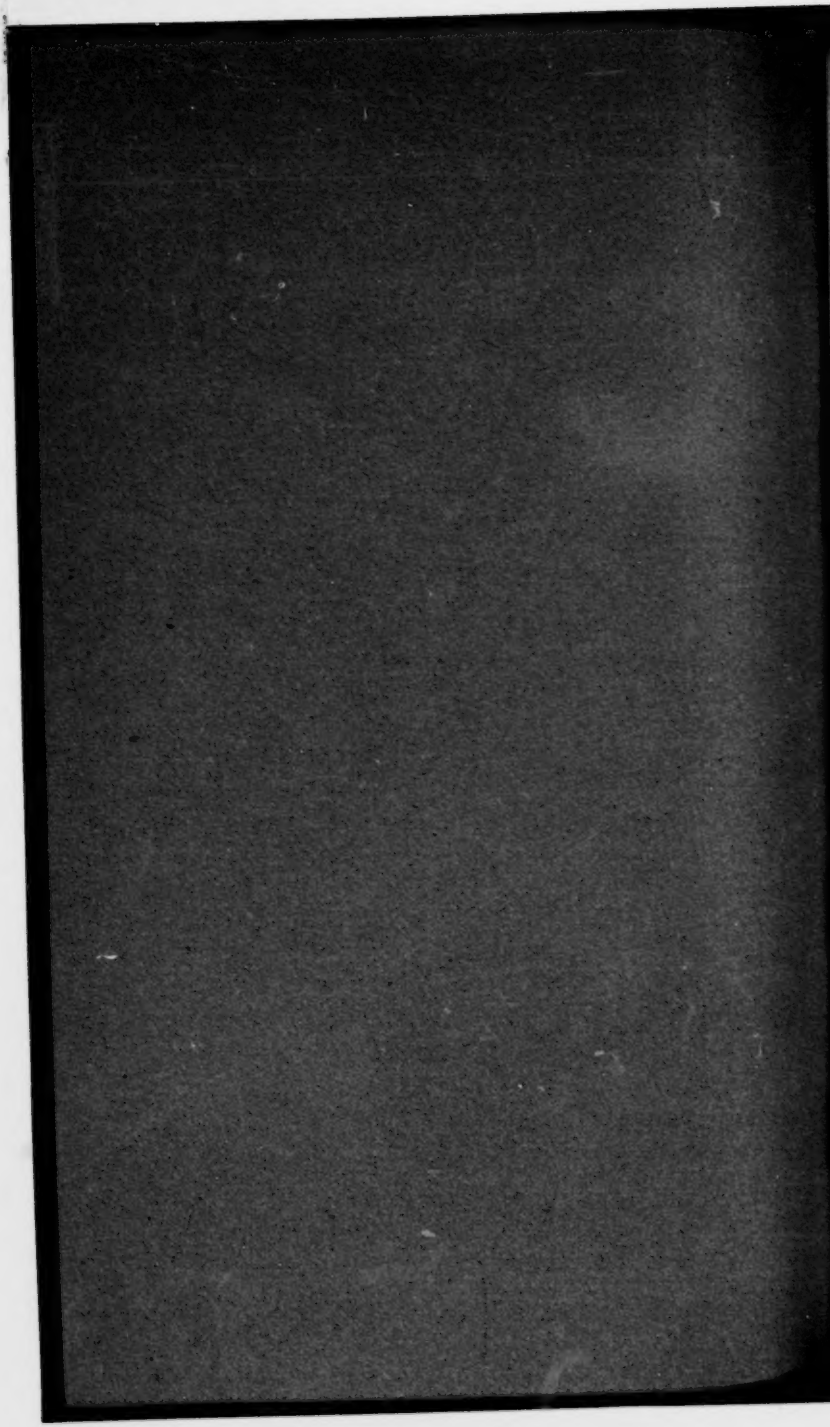

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IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF FOR PLAINTIFF IN ERROR.

Preliminary Statement.

This action was begun on the 2d day of November, A. D. 1892, by a bill of complaint filed by the Florida Central and Peninsular Railroad Company in the circuit court for Leon county, Florida, naming William D. Bloxham, the then comptroller of the State of Florida, and John A. Pearce, then and now sheriff of Leon county, as defendants.

The objects of the bill, as appears from its averments and prayers for relief (p. 15) and as found by the supreme court of the State in its opinion (p. 230), were threefold:

1st. To have the various lines and railroad property described in said bill of complaint declared to be exempt from taxation under the eighteenth section of the internal-improvement act (ch. 610 Laws of Florida, approved January 6, 1855) for a continuing period of thirty-five (35) years from and after the completion of each of said lines; and further that said exemption attached to or was impressed upon the *rem*, and followed the same into whosoever's possession it might come.

2d. To recover, as the successor in interest of the Florida Railway and Navigation Company, the sum of $140,812.47 paid by said company to the tax collector in the year 1885 for taxes alleged to have been illegally assessed against it for the years 1881, 1882, 1883, and 1884; and

3d. To enjoin the collection by the defendants of taxes for the years 1879, 1880, and 1881, assessed against the various lines and properties of complainant under the provisions of acts of the legislature approved February 12, 1885, and June 8, 1891, otherwise identified as chapters 3558 and 4073 of the Laws of the State of Florida.

The laws of Florida in question are as follows:

"*Laws of Florida*, 1885, *Ch.* 3558.

"AN ACT to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment.

"*The people of the State of Florida, represented in senate and assembly, do enact as follows:*

"SEC. I. That in all cases in which any railroad or the properties thereto belonging or appertaining in this State, in the tax years commencing March 1st, 1879, 1880 and 1881, or any of such years were not assessed for taxes for such years, it shall be the duty of the comptroller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes, and twenty per centum of the taxes so assessed for said years and now unpaid shall be collected at the same time the taxes for the year 1885 shall be assessed and collected, and each year thereafter an additional twenty per centum of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid.

"The taxes to be assessed under this act shall be the same in amount as they would have been had they been assessed in such years or any of them as to which there was a failure to assess.

"Approved February 12, 1885."

"*Laws of Florida*, 1891, *Ch.* 4073.

"AN ACT to provide for the collection of taxes assessed under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment, being chapter 3558, Laws of Florida.'

"*Be it enacted by the legislature of the State of Florida:*

"SECTION I. That the State and county taxes assessed by the comptroller of the State of Florida, upon any railroads and the properties thereof in said State, for the years 1879, 1880 and 1881, under and in pursuance of 'An act to provide

for the assessment and collection of taxes on railroads, and the properties thereof for the years 1879, 1880 and 1881, as to which there was no assessment' but which have not been collected, shall be collected, and the payment thereof be enforced at the same time and in the same manner, as is now, or may hereafter be provided by law, for the collection and the enforcement of the payment of taxes assessed upon the railroads and properties thereof in the State of Florida.

"SECTION II. That this act shall take effect immediately after its passage.

"Approved June 8, 1891."

The circuit court by its decree, dated November 25, 1893, denied the first two objects of relief so sought, but granted the third (pp. 39–41), and on appeal the State supreme court, on March 19, 1895, affirmed said decree in part and reversed it in part AND REMANDED THE CAUSE FOR FURTHER PROCEEDINGS TO BE HAD IN ACCORDANCE WITH THE OPINION OF THE SUPREME COURT (p. 45).

Upon the remittitur further proceedings were had in the trial court consisting, among others, of a petition for leave to file a supplemental bill in the nature of a bill of review (p. 50), an order granting leave to file the same (p. 55), the filing of such supplemental bill and a demurrer thereto (p. 61), and entry of an order February 26, 1896, overruling such demurrer (p. 63), and a further appeal from such order to the State supreme court (p. 63).

On this appeal error was assigned in the granting leave to file the supplemental bill and in the order overruling the demurrer thereto (p. 64), and, the cause having been again submitted to the supreme court, the decree or order of the trial court overruling the demurrer was, on the 17th

day of March, 1897, reversed, and the cause remanded with directions to "dismiss the supplemental bill in the nature of a bill of review, and to enter a final decree in accordance with the former judgment of this court upon which a mandate will again issue; and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court, may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahooche and branches" (p. 66).

Pursuant to such decree, the mandate of the State supreme court, striking down the decree of the circuit court of November 25, 1893, and remanding the case for further proceedings, in accordance with the opinion of the court, again issued on the 22d day of May, 1897 (p. 66), and at the same time there was also issued a further mandate, directing the circuit court to dismiss the supplemental bill, in the nature of a bill of review, and to ENTER A FINAL DECREE IN ACCORDANCE WITH THE FORMER JUDGMENT OF THE COURT, WITH LEAVE TO THE APPELLEE, THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, TO APPLY, WITHIN NINETY DAYS AFTER THE DECREE WAS ENTERED BY THE CIRCUIT COURT, FOR LEAVE TO FILE A BILL OF REVIEW TO THE EXTENT OF THE LINE OF THE RAILROAD MENTIONED IN THE DECREE FROM JACKSONVILLE TO CHATTAHOOCHE AND BRANCHES, and commanding "such further proceedings" to be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had.

June 19, 1897, a decree was entered in the circuit court pursuant to the mandates of the State supreme court issued May 22, 1897, whereby (1) the former decree of the circuit

court, dated February 20, 1896, overruling the demurrer to plaintiff's supplemental bill in the nature of a bill of review, was reversed, the demurrer sustained, and said supplemental bill dismissed at plaintiff's costs; (2) and reaffirming in part and reversing in part and otherwise modifying the decree of November 25, 1893, and (3) perpetually enjoining and restraining the defendants Bloxham and Pearce from selling or attempting to sell certain specified portions of complainant's lines of railroad under the assessment for the years 1879, 1880, and 1881 (pp. 104, 105).

September 18, 1897, under the permission granted by the supreme court, plaintiff filed its petition for leave to file a bill of review (p. 105 *et seq.*), and in such petition requested "by way of supplement" that "William H. Reynolds, as comptroller of the State of Florida," be made a party defendant thereto in lieu of W. D. Bloxham, "who had ceased to be such comptroller" (p. 141).

September 18, 1897, Reynolds was substituted as party defendant in place of Bloxham, and complainant was granted leave to file its bill of review, as prayed for in its petition (p. 142), and such bill of review was thereafter filed (p. 143), and defendants having answered the same and issue having been joined, testimony was taken; and thereafter, on the 6th day of January, A. D. 1900, the circuit court entered its final decree in the cause, ordering, among other things (p. 216):

"1. That so much of said proceedings as prays that the defendants be enjoined and restrained from the collection of taxes assessed in 1885 for and on account of the State of Florida on the line of the railroad of the complainant company that lies between Fernandina and Cedar Keys and Waldo and Ocala for the years 1879, 1880 and 1881, and

on the line from Ocala (*to Waldo*) to Wildwood for the taxes for the years 1881, be and the same is hereby denied.

"2. It is further ordered, adjudged, and decreed that as to the taxes thus assessed for the years 1879, 1880 and 1881, the collection of which is likewise prayed to be enjoined on so much of the lines of the railroad of the complainant as lies between Jacksonville and River Junction, with branches thereof to Monticello and St. Marks, the prayer of the said complainant is granted, and the defendants, William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, be, and they are hereby, forever enjoined from collecting the same or in anywise interfering with said complainant on account of the same.

"3. It is further ordered, adjudged, and decreed that *as to* the prayers of the complainant as in said proceedings made, other than herein allowed, be, and the same are, hereby denied."

From this decree, on January 8, 1900, a further appeal was prayed to the supreme court of the State by the defendants (p. 217), and errors were assigned, including, among others, the following (p. 218):

"3. The circuit court erred in decreeing:

"(1.) That so much of said proceedings as prays that the defendants be enjoined and restrained from the collection of taxes assessed in 1885 for and on account of the State of Florida on the line of railroad of the complainant company that lies between Fernandina and Cedar Keys and Waldo and Ocala for the years 1879, 1880, and 1881, and on the line from Ocala (*to Waldo*) to Wildwood for the taxes of the year 1887, be, and the same is hereby, denied.

"4. The circuit court erred in decreeing:

"(2.) It is further ordered, adjudged, and decreed that as to the taxes thus assessed for the years 1879, 1880, and 1881, the collection of which is likewise prayed to be enjoined on so much of the lines of the railroad of the complainant as lies between Jacksonville and River Junction, with branches thereof to Monticello and St. Marks, the prayer of the said complainant is granted, and the defendants, William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, be, and they are hereby,

forever enjoined from collecting the same or in anywise interfering with said complainant on account of the same.

"5. The circuit court erred in decreeing:

"(3.) It is further ordered, adjudged, and decreed that *as to* the prayers of the complainant, as in said proceedings made, other than as herein allowed, be, and the same are hereby, denied."

On the 26th day of June, A. D. 1900, the supreme court of the State on hearing such appeal entered a final decree in the following terms (p. 222):

"This cause having been submitted to the court * * * it seems to the court there is error in the said decree. It is therefore considered, ordered, and adjudged by the court that the said decree of the circuit court enjoining the sale for taxes assessed for the years 1879, 1880 and 1881, on the line of the appellee's road from Jacksonville to Chattahooche and branches is reversed, and the bill of reviews is hereby dismissed, and it is further ordered that the appellants do recover of the appellee their costs," etc., etc.

To review this decree and all the proceedings in the cause upon which it is either founded or operates, the writ of error from this court was allowed on the 24th day of October, A. D. 1900, and the transcript of the record was filed and docketed in the Supreme Court of the United States on the 29th day of the same month.

Since the case has been pending in this court, the defendant in error Reynolds has died, and, at the instance of the counsel for defendants in error, Alonzo C. Croom, Reynolds' successor in office as comptroller of the State of Florida, has been substituted in his stead as a party defendant.

Federal Question Involved.

The Federal question involved in the case, as stated in the petition for the allowance of the writ of error (pp. 222, 223), is that by the proceedings in the cause there was drawn in question the validity of the statute of the State of Florida approved February 12, 1885, to wit, "An act entitled An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880 and 1881, as to which there was no assessment;" and also the validity of the assessment of taxes for State and county purposes under and in pursuance of said statute upon the lines of plaintiff in error's railroad from Jacksonville, Florida, to the Chattahoochee river, with branches from Tallahassee to St. Marks and from Drifton to Monticello, and the lines from Fernandina to Cedar Keys and from Waldo to Ocala, all in said State of Florida, on the ground that said statute and all taxes imposed thereunder were repugnant to the Constitution of the United States; and the decision of the State supreme court was in favor of the validity of said statute and the assessments made thereunder.

In addition to the Federal question so stated, which will be particularly relied upon in this court both as to the matter of jurisdiction and on the merits, a further Federal question was raised by the record growing out of the alleged conflict between the internal-improvement act of Florida, being chapter 610 of the Laws of Florida, approved January 6, 1855, and the act of 1885, above referred to, viewed in the light of the prohibitions of the Constitution of the United States, but such question was decided adversely to

the contention of complainant by the State courts and is no longer relied upon.

It is conceded by plaintiff in error that the decrees of the circuit court, as affirmed by the supreme court, in so far as they denied the first two objects of relief sought by complainant's bill, were technically correct, and no attempt to reverse the same will be made here.

The sole relief sought in this court is to obtain a reversal of the decree of the State supreme court, in so far as it reversed the decree of the circuit court enjoining the sale of complainant's lines of railroad for the taxes assessed for the years 1879, 1880, and 1881, such taxes amounting to $96,181.69.

Pleadings and Procedure.

This cause was originally heard upon bill and answer and these pleadings, filed at the threshold of the proceedings, have been preserved and reiterated at every subsequent stage thereof.

By its bill of complaint the complainant averred that it was a corporation duly organized in November, 1888, and that it owned various lines of railroad and appurtenant properties fully described in its said bill.

Of such lines of railroad those designated as A, B, C, and E were constructed prior to 1865 (p. 3) under the terms of the internal-improvement act of 1855, but for non-compliance with the requirements of said act in the payment of interest upon the completed roads, said roads were seized by the trustees of the internal-improvement fund and sold, and

thus passed into the control of various companies through which complainant deraigns title (p. 6).

The roads designated in the bill of complaint as D, F, G, H, and J were all completed and in operation prior to 1884 (p. 3).

Roads K and L were completed and in operation in 1887, and road M in 1891 (p. 3).

On the 29th of February, 1884, the various corporations then owning the roads above designated as A, B, C, D, E, F, G, H, and J, all of which had been completed and put in operation prior to 1884, were consolidated into a single company called the Florida Railway and Navigation Company (p. 8). The lines designated as K, L, and M were subsequently constructed, but no question concerning them arises on this writ of error.

At the time of the consolidation and the organization of the Florida Railway and Navigation Company, in February, 1884, each of the consolidated companies had an outstanding bonded indebtedness secured by deeds of trust upon their respective properties aggregating several millions of dollars, and under the terms of said deeds of trust said properties were liable to foreclosure and sale for failure to pay interest or principal, and in the event of the failure to pay the former the entire indebtedness, at the election of the holder, became due and payable (p. 8). To secure the consolidation of the various underlying properties into the Florida Railway and Navigation Company, as is averred by the bill of complaint, mutual concessions were necessary, and said changes and consolidations were made by radical changes in the holdings of the capital stock of said companies, and with each and every of such

changes and consolidations parties not before interested in the one or the other of said consolidated companies thus became *bona fide* holders of legal estates in such other companies from the dates of such consolidations, and entitled to the protection of the existing laws applicable to such properties from and after the dates of such acquisition, and that the holders of the capital stock of the Florida Railway and Navigation Company from the date of the consolidation of the constituent companies under that name "became *bona fide* holders of proprietary interests in each of said constituent properties (and) which interests were then acquired subject to the laws of such property as they then existed and (were) entitled to the protection of such laws. Such existing laws were a part of the contract under which they thus acquired their said property" (p. 9).

Under the terms of the act of 1855—the internal-improvement act—the railroads of complainant, designated from A to J, inclusive, had been held by the taxing authorities of the State to be exempt from State and county taxes until the year 1885, when, under the provisions of the act of February 12, 1885 (chapter 3558, Laws of Florida), the then comptroller of the State, on October 18, 1885, made an assessment upon all of the lines of railroad of the Florida Railway and Navigation Company for the years 1879, 1880, and 1881.

On the 1st day of July, 1884, prior to the passage of the act of 1885 (chapter 3558, *supra*), and more than a year prior to the assessment of taxes for said years 1879–1881, the Florida Railway and Navigation Company had made an issue of $10,000,000 of first-mortgage coupon bonds, secured

by a deed of trust upon all of its property, including the several lines of railroad above designated, and had disposed of more than $5,000,000 of said bonds for value to *bona fide* holders (p. 13), the underlying bonds of the constituent companies being still outstanding and unredeemed (p. 13).

Default having been made in the payment of interest upon said bonds and the entire bonded indebtedness having thereby become due and payable, bills for the foreclosure and sale of all the lines of railroad of said Florida Railway and Navigation Company were duly filed by W. Bayard Cutting, a judgment creditor, and the several trust companies representing the holders of said bonds, and foreclosure and sale having been decreed, all of said lines of railroad and properties, on the — day of March, A. D. 1889, were sold severally under their first liens and as a whole under the lien of the mortgage of the Florida Railway and Navigation Company (p. 13).

At such sales said W. Bayard Cutting, representing said bondholders, bought all of said properties, and he and his associates having theretofore organized the Florida Central and Peninsular Railroad Company (the complainant) for such purpose, said company was let into the possession of said properties on the 1st day of May, 1889, and has maintained such possession ever since (p. 13).

At the date of the bond issue of the Florida Railway and Navigation Company above referred to, namely, July 1, 1884, and of the deed of trust given to secure the same, under the lien of which, as subsequently foreclosed, the plaintiff in error came into possession of the properties in question, none of the taxes, the collection of which is here sought to be enjoined, had been assessed upon the several lines

of railroad above enumerated for the years 1879, 1880, and 1881, nor were such taxes for said years due and unpaid upon any of said properties. At said date and for many years prior thereto, there was in force a statute, designated as chapter 3413 of the Laws of Florida of 1883, section 26 of which is as follows:

"ASSESSMENT OF LAND PREVIOUSLY OMITTED.—If any assessor, when making his assessments, shall discover that any land in his county was omitted in the assessment-roll of either or all of the three previous years, and was then liable to taxation, he shall, in addition to the assessment of such land for that year, assess the same separately for such year or years that may have been so omitted, at the just value thereof in such year, noting distinctly the year when such omission occurred; and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted, and taxes shall be levied and collected thereon in like manner and together with the taxes of the year in which the assessment is made; but no lands shall be assessed for more than three years' arrears of taxes; and all lands shall be subject to such taxes omitted to be assessed, into whosoever hands they may come."

Referring to this statute, complainant averred in its said bill of complaint that the taxing power of the State was expressly prohibited thereby "from taxing said company's road, or any other property in the State, even in case the same had been improperly omitted from the taxing rolls and had thus improperly escaped taxation, for more than three previous years from the time of making an assessment."

Complainant also averred that properties of large value, to wit, lands in various counties of said State, had been improperly omitted from assessment for taxes during the years

1879, 1880, and 1881 and each of them, and that the act of February 12, 1885, aforesaid (chapter 3558 of the Laws of Florida), was unconstitutional and void, in that the same did not provide for a uniform and equal rate of taxation; and, further, that it did not attempt to secure a just valuation and assessment of all classes of property, but was enacted to reach only property of the class belonging to the complainant, namely, railroad property, and that there was no law in existence at such time for reaching other classes of property, which were omitted from assessment and which had thereby escaped taxation for said years, nor had there since been enacted any law to remedy such wrong (p. 12).

Also that at the time the Florida Railway and Navigation Company was organized as a corporation and acquired its lines of railroad, as aforesaid, it found such properties as were then in existence and now form part of plaintiff in error's system assessed for taxes for the year 1880 and subsequent years, and it was insisted that "it was an exhaustion of the State's and the tax-making power over the property when the (such) assessment was made, and the time provided by law for correcting errors therein had expired, which time has long since elapsed in so far as the same could be made a lien on the property itself;" and, further, "that the right to levy any additional tax on the values of said property, if it exists at all, exists only as against the owners at the time of the property, and that the same is not now a lien on the property of your orator, and that any law of subsequent enactment which attempts to create a lien on this property in the hands of purchasers for value is void" (p. 12).

Also "that the rights and interest of the complainant in the said several properties relate back to the date of the said several respective mortgages created as aforesaid," * * * and that complainant "is in no otherwise whatever the successor to the Florida Railway and Navigation Company, and that it holds its property under and by virtue of liens created a long time in *the* advance of the pretended assessments under chapter 3558 of the Laws of Florida" (p. 14); and "that on the 8th day of June, 1891, without any previous notice whatever to your orator, there was approved by the governor of the State of Florida an act, being chapter 4703 of the Laws of Florida" * * * and that, "pretending to act under the authority of said act, the comptroller of the State of Florida has directed and the sheriff of Leon county intends and has undertaken to seize and sell the property of your orator for the State and county taxes so illegally assessed for the years 1879, 1880, and 1881" * * * (p. 14).

The relief prayed, in addition to other things, was that the circuit court would decree:

"8th. That your orator's lines of road and no part of them are subject to the payment of the tax assessed against them in A. D. 1885 for the years 1879, 1880 and 1881" (p. 15).

Defendants, in the answer, denied "that the property of the Florida Railway and Navigation Company and its constituents were in fact exempt from taxation at the time of the passage of said act" (1885, chapter 3558), and averred "that the State officers were authorized to to levy upon said property for said taxes" (p. 27); and further denied "that by reason of the several consolidations of

roads mentioned into * * * the Florida Railway and Navigation Company there was anything in or any existing laws of such property acquired by which they or the complainant herein can claim or receive any immunity or exemption from taxation or the taxes demanded now from them by the State of Florida" (p. 29).

Defendants further denied "that the exemption of the said lines of railroad set forth in said bill from taxation for the periods of time alleged became by contract of the State a part and parcel of the property value of said roads, and that this exemption became a part of the value of the property of the railroad which complainant acquired in its acquisition of each and all of its said lines, and deny that this was the law of the property as declared by the court of this State (Florida) when the Florida Railway and Navigation Company acquired the same, and that as to so much of complainant's bill as sets forth the claim that complainant is exempt from the payment of the taxes demanded by the State of Florida and by these defendants sought to be collected by the levy and proposed sale complained of, these defendants claim all the benefits they could have from a demurrer interposed thereto" (p. 29).

Further answering, defendants denied "that the act under which W. D. Barnes, comptroller, claimed to assess back taxes for the years 1879, 1880, 1881 was not a law of the State of Florida," * * * and denied "that said act of assessment was in violation of complainant's alleged exemption, and that said act is null and void" (p. 30), and admitting that the assessment by Barnes, comptroller, on the lines of the Florida Railway and Navigation Company was made

under chapter 3558, Laws of Florida, denied that said act was "unconstitutional and in violation of any contracts and rights of the Florida Railway and Navigation Company, its stockholders and bondholders," and averred that "said act is legal, just, and constitutional" (p. 30).

And as to such portions of complainant's bill as claimed that there was no lien on the lines of road acquired by the Florida Railway and Navigation Company at the time of acquirement, and that chapter 3558, Laws of Florida, was unconstitutional and void, in that it did not provide for a uniform and equal rate of taxation and did not secure a just valuation and assessment for all classes of property, and that the State's power of taxation was exhausted over the property when the assessment was made, as shown by Exhibit "C;" and to such portions as denied the right of the State to levy an additional tax on the values of the Florida Railway and Navigation Company; and to those portions relating to the issue of $10,000,000 of bonds and the disposition of $5,000,000 thereof, and to the foreclosure and sale of the properties of said company and the purchase of the same by Cutting as agent, "as showing any reason why the taxes sought to be collected by the levy and proposed sale herein are not due to the State of Florida," defendants claimed "all the benefits they could have from a demurrer interposed thereto" (p. 31).

Defendants admitted the passage and approval of chapter 4703, Laws of Florida, as alleged, and also that under the authority of said act "and the acts to which it relates they had seized and levied upon the property of complainant, as alleged, "to pay the taxes due on the same for the years 1879, 1880, and 1881, * * * and that they will sell said property of the complainant for the purpose of

paying such due and unpaid taxes for said years," unless such taxes, with costs and expenses, be paid before such sale (p. 31).

It further appeared from the bill (p. 13) and was admitted by the answer (p. 31) that the amounts realized from the foreclosure sales fell far short of even the accumulated interest on the bonded indebtedness of the roads forming the system of the Florida Railway and Navigation Company.

The cause having come on for hearing on the application for an injunction *pendente lite*, it was stipulated between the attorneys for the respective parties—

"That if said decision shall be for a refusal of the injunction that thereon a decree may be entered dismissing complainant's bill of complaint, but that said order or decree shall have the same force and effect as if there had been a temporary injunction, which was dissolved by the action of the court. There having been, by mutual consent, proceedings in accordance with such practice as would have followed an injunction, exception to the absence of a formal writ of injunction is waived in both this court and the supreme courts either of Florida or of the United States—this without prejudice as to the exercise of the full discretion of the court, and A FINAL DECREE UPON THE MERITS MAY ALSO BE ENTERED HEREIN IN ACCORDANCE WITH ITS FINDINGS" (p. 39).

The cause having thus come on for hearing in the circuit court upon bill, answer, and exhibits, it was on November 25, 1893, adjudged and decreed, among other things, as follows:

"4th. That the taxes now attempted to be collected on the said several lines of railroad owned by the complainant by the defendant William D. Bloxham, as comptroller, and John A. Pearce, as sheriff of Leon county, under assessment made thereon in A. D. 1885, by virtue of a statute passed A. D.

1885, chapter 3558, Laws of Florida, on the aforesaid lines of railroad and branches, now the property of the complainant, but which *was* so assessed on the same for the years A. D. 1879, A. D. 1880, and A. D. 1881, and which were assessed then as the property respectively of the Jacksonville, Pensacola and Mobile railroad, the Florida Central *and* railroad, and the Transit Peninsular Railroad Companies, were and are not liens on said several lines of railroad for the several years aforesaid for which said assessments were made, and were not and are not assessable against the Florida Railway and Navigation Company; that the said statute under which the assessments were made for the years last aforesaid was a special statute for the collection of general revenue and did not provide or attempt to provide a uniform, equal, and just assessment or collection of taxes for the years A. D. 1879, A. D. 1880, and A. D. 1881, and that so much and that such part of said statute of A. D. 1885, chapter 3558, Laws of Florida, as attempts to provide for an assessment and collection of taxes for the years A. D. 1879, 1880, and 1881 is, as to the complainants' said property, unconstitutional and void, and the State of Florida, by its legislature having repeatedly and expressly limited its right to assess property, omitted from assessment for taxes for more than three years next preceding the assessment thereof the said assessments so made as aforesaid or attempted to be made on the said properties of the complainants for the years A. D. 1879, A. D. 1880, and A. D. 1881, under the provisions of the act aforesaid, and the said warrant and tax levy is hereby adjudged and decreed to be unequal, unlawful, unconstitutional, and void.

"5th. And that the said defendants, the said William D. Bloxham, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, Florida, their agents and servants, and each and every of them, be, and they are hereby, perpetually enjoined from selling or attempting to sell the said several lines of railroad of complainants or any part or parts thereof under said assessment for the years A. D. 1879, A. D. 1880, and A. D. 1881, and from in any way or manner interfering with or attempting to collect the said taxes for said years last aforesaid" (pp. 40, 41).

From this decree defendants appealed to the supreme court of the State (p. 41) and assigned as error so much of the decree of the circuit court as held—

(1.) "That the taxes attempted to be collected as set out in said decree and for the years named therein were not assessable against the several lines of railroad described therein, and that the statute under which the assessments named in said decree were made, was, as to the property therein also named, unconstitutional and void, and in further rendering its final decree that the assessments, warrant, and tax levy set out and described in said decree were unequal, unlawful, unconstitutional and void;" and

(2) In enjoining appellants "from selling or attempting to sell the said several lines of railroad or any part or parts thereof of the complainant company for the taxes assessed against them for the years 1879, 1880, 1881, as set out in the 5th paragraph of said final decree" (pp. 42, 43).

The complainant also assigned errors (p. 43), no one of which is at all important here. March 19, 1895, the supreme court of Florida affirmed said decree in part and reversed it in part, and so much thereof as held that the lines of railway were not assessable for the years 1879–1881, and enjoined the appellants from attempting to sell same under the assessments made for the taxes for said years, was "REVERSED AND THE CAUSE REMANDED FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THE OPINION OF THE COURT FILED HEREIN" (p. 45).

Petition for rehearing was filed May 20, 1895, by the Florida Central and Peninsular Company insisting that the assessments made under the act of 1885 for the years 1879–1881 were made against lands which had passed into the hands of innocent holders for value when they were free from liens (p. 46), and the attention of the court was again called "to the statutory limitation of three

years preceding an assessment in the exercise of the power of assessment for omitted taxes" (p. 48).

The petition for rehearing having been denied (p. 48), the mandate of the Supreme Court embodying the decree above mentioned, and particularly the clause thereof remanding the cause "for further proceedings in accordance with the opinion of the court filed herein," issued (p. 49). No decree was entered in the circuit court upon this mandate, and, pursuant to their understanding of the scope of the direction for "further proceedings," the complainant applied for leave to file a supplemental bill, setting up at greater length and in detail the circumstances upon which it relied to substantiate its claim that it was a *bona fide* purchaser and holder of the properties in question free from lien for the taxes for 1879–1881 (pp. 50–54), and such application having come on for hearing and having been submitted upon brief of counsel "for said parties respectively," it was ordered and decreed by the court that "said complainant has leave to file its supplemental bill in the nature of a bill of review in the above-entitled cause" (p. 55), and no exception having been taken by defendants to such order or decree, complainant's supplemental bill in the nature of a bill of review was filed November 12, 1895 (p. 55 *et seq.*).

To the supplemental bill so filed defendants demurrep upon various grounds (p. 62), and the demurrer having been set down for hearing, it was, on February 26, 1896, overruled by the court (p. 63).

Defendants appealed from this order overruling their demurrer (p. 63) and assigned as errors:

1. That the circuit court erred in allowing the supplemental bill to be filed;

(2) And in overruling the demurrer interposed thereto (p. 64).

Upon consideration of this appeal the supreme court of Florida, on March 17, 1897, decreed that the decree of the circuit court—

"Overruling the demurrer will be reversed and the cause remanded with further directions that the circuit court dismiss the supplemental bill in the nature of a bill of review and enter a final decree in accordance with the former judgment of this court, upon which a mandate will again issue; and it is further ordered that the appellee, within ninety days after the decree is entered by the circuit court may have leave to apply to the said circuit court for leave to file a bill of review to the extent of the line of railroad mentioned in the decree from Jacksonville to Chattahooche" * * * (p. 66).

The mandates of the Supreme Court based on this decree having been issued May 22, 1897 (pp. 66–68), and duly filed in the circuit court, a decree in obedience thereto was entered in that court on June 19, 1897 (p. 104), and thereafter, on the 13th day of September, 1897, complainant, availing itself of the permission granted by the Supreme Court, filed its petition for leave to file a bill of review (pp. 105–142), and such leave was granted the same day (p. 142).

The bill of review filed pursuant to such leave recited the pleadings and proceedings theretofore had in the case *verbatim et literatim* (pp. 143–176), and added that all the foreclosure proceedings and transfers of the several lines of railroad and railroad property mentioned in complainant's original bill of complaint were had in

and under the authority of the circuit court of the United States for the northern district of Florida; that all orders, decrees, accounts, and other papers and documents relating thereto were filed or recorded as a part of and among the records of said court; that before the filing of petitioner's original bill, to wit, on the 29th day of May, 1891, the court-house building in Jacksonville, where said court was held and its records kept, together with all of said records, files, papers, and documents were lost and destroyed by fire, and that complainant was thereby deprived of much valuable data and information necessary in the preparation of its bill of complaint and was forced to rely upon memory of individuals, etc., etc. (pp. 176, 177); that complainant was not in existence at the time of the transactions referred to, but was organized to own and operate said railroad properties that had been purchased at a judicial sale in 1889 by persons "who were unfortunate creditors of the previous owner and who were otherwise entire strangers to the property prior to their purchase," and that the narrative of title in petitioner's original bill was only in explanation of the situation at the time of the assessment, "which justified the allegation in the bill of an entire change or ownership for value of the entire property before the date of such assessment."

Complainant further averred in its said bill of review:

"That the supreme court decided, in effect, that the State did not have the power to follow this property for the taxes of 1879, 1880, and 1881 by assessment in 1885 if it had ceased to be in the possession and ownership of the persons to whom it belonged during the time for which such assessment was made into the hands of innocent purchasers for value, and reached its conclusion that the railroad from Jacksonville to Chattahoochee river, with

branches to Monticello and St. Mark's, was owned and operated by Edward J. Reed and associates from September, 1879, to February, 1882, by a wholly mistaken view of the facts not in issue in the case or submitted, and upon an interpretation of the statements of the bill that is entirely at variance with the facts as they existed and the understanding and purport of such statements at the hearing below; that while said original bill, on pages 14 and 15, does allege that Edward J. Reed and associates purchased said line of road at foreclosure sale Sept. 25th, 1879, and conveyed the same Feb'y 28th, 1882, to a company organized and known as the Florida Central and Western Railroad Company, said bill is silent in its allegations as to the possession and ownership of said line of railroad during the time intervening between Sept. 25th, 1879, and February 28th, 1882; and your orator shows that since the said opinion was rendered, with the aid of its counsel, some old letters and portions of accounts have been found which have led to the discovery of what was the actual status of the possession and ownership of said property during said interval, which before then was not known by your orator and which could not be found by it, although it exercised great diligence in the search for the actual facts to set them forth in its bill; and your orator now alleges as evidence discovered since the rendition of said opinion by said supreme court that in fact and in truth during all these years, covering the whole of the period for which these taxes are assessed and for the entire time between September, 1879 (and before), and until Feb'y 28th, 1882, a company known as the Jacksonville, Pensacola and Mobile Railroad Company owned that part of the aforesaid line of railroad between Lake City and Chattahoochee, with branches to St. Mark's and Monticello, and it was possessed, used, and operated by receivers of United States court, viz., Sherman Conant and A. B. Hawkins, who retained the possession of said road and received and retained the tolls and revenues thereof from September, 1879, the date of the sale alleged in the original bill, until after the said sale was confirmed by said court; that on the 10th day of February, A. D. 1882, the said H. R. Jackson, Chas. H. Symonton, and Adolph Engler, purchasers at the sale aforesaid, conveyed the said line of railroad for value to said Edward J. Reed, before which last-named date Reed and his

associates were not owners of and were not possessed of said property, nor in receipt of any of its incomes, or in any way interested therein; that the portion of said road between Lake City and Jacksonville was owned and possessed and enjoyed by the Florida Central Railroad Company, its owners for many years, until the judicial sale thereof on the 6th day of January, 1882, when it was purchased by Edward J. Reed, who for the first time became possessed of the said line of railroad after the confirmation of said sale occurring thereafter within less than ten days from the date of sale aforesaid.

"That said foreclosures and sales and receiverships were had in and under the authority of the circuit court of United States for the northern district of Florida, and all the records and papers of said court in said causes were destroyed by fire, as hereinbefore said, before the preparation and filing of petitioner's original bill; that Sherman Conant, one of the aforesaid receivers, had died prior to that time, and A. B. Hawkins, the other receiver, had removed from the State of Florida to the State of North Carolina; that your orator incurred great expense and labor in the preparation of its said original bill, occasioned by the destruction and loss of the court records aforesaid, and the great time that has elapsed since the occurrence of many of the transactions therein narrated, and exercised all due and reasonable diligence to ascertain, discover, and set forth every fact material to its case; that the aforesaid new matter was not known to your orator and by the exercise of due and reasonable diligence could not be discovered and produced at the hearing upon said original bill, and your orator again avers that it did exercise extraordinary diligence and did avail itself of all known sources of information in its efforts to obtain and set forth in its bill the actual facts of each and every the events, incidents, changes, sales, and all other proceedings material to the full advisement of the court in and about the fair determination of the questions involved in the said controversy, and that it omitted nothing therefrom that was available to it in the exercise of such diligence.

"And your orator most respectfully submits and suggests that while there was no change in the (legal) ownership and possession of the several lines of railroad acquired by the Florida Railway and Navigation Company from the time

of its organization till the assessments were made, still it is charged in petitioner's bill and admitted by the defendants' answer that after said property was acquired by the Florida Railway and Navigation Company, and before it was assessed for taxes for the years 1879, 1880, and 1881, and, to wit, on July 1st, 1884, and before the passage of chapter 3558, Laws of Florida, under which such assessment was made, that said company issued its bonds to the amount of $10,000,000, and that $5,000,000 of said bonds were actually disposed of to holders for value, secured by mortgage or deed of trust upon all the said lines of railroad property, and also that at the time of the formation and consolidation of the original and constituent railroad companies mentioned in said bill into the said Florida Railway and Navigation Company each and every of said several constituent companies had outstanding and unpaid large amounts of bonds by them severally theretofore issued, and secured by mortgage or deeds of trust upon said several lines of railroad respectively; that upon the failure of the said Florida Railway and Navigation Company to pay a certain common-law judgment rendered against it in favor of W. B. Cutting for monies borrowed and for defaults in the payment of the interest on the underlying bonds aforesaid of the several constituent companies, the lines of railroad of said Florida Railway and Navigation Company were, upon bills filed by said Cutting and by the several trust companies representing the holders of said bonds in the circuit court of the United States for the northern district of Florida for the foreclosure of said liens, sold under the decree and authority of said court in the year A. D. 1889, severally under their first liens and as a whole under the lien of the mortgage created by the Florida Railway and Navigation Company, as aforesaid, and that W. B. Cutting, as agent, bought the said property and conveyed it to your orator's company, which he and his associates had organized for that purpose, and that your orator is not otherwise whatever the successor of said Florida Railway and Navigation Company, and it holds its property by virtue of liens created long prior to the assessment made under chapter 3558, Laws of Florida.

"And your petitioner respectfully submits that under undisputed facts your orator occupies the legal position and attitude of a *bona fide* purchaser for value of the whole of

said property at the date of the execution of said several mortgages or deeds of trust, and that at said several dates the State had made no assessments and had taken no steps whatever to collect the said taxes, and that no taxing statute had affixed any lien upon said property, and that at the date when said consolidated bond issue was made under which the system as a whole was sold the time for the assessment and collection of taxes for the years 1879, 1880, and 1881 had passed, and that chapter 3558, under which the assessment was subsequently made, was not enacted until February 12th, 1885, and, having acquired its said property by purchase at the judicial sales aforesaid, your petitioner respectfully submits that it stands in the attitude of a *bona fide* purchaser of said property for value as of the dates of the said several liens securing the bond issues aforesaid, and should have been so adjudged by the court and decreed to hold the same *exempt* from the payment of the taxes as assessed for the years 1879, 1880, and 1881, and your orator suggests and assigns the failure of the court so to decree as error in law, apparent upon the face of said decree, for which the same should be reviewed and reversed. Your orator further shows that the decree rendered by the judge of the 3rd judicial circuit on June 19th, 1897, as a final decree is informal and imperfect and within itself unintelligible, as it can only be read in connection with and by reference to the decree of November 25th, 1893; that it was rendered for and against W. D. Bloxham, as comptroller, who was not at that time comptroller of the State of Florida, and there were no proper parties to said cause at the date of the rendition of said decree.

"And your orator respectfully insists that the aforesaid final decree entered as herein aforesaid ought to be reviewed, revised, and set aside for the many errors in law and imperfections apparent in the body of said decree, as hereinbefore set forth, and that your orator ought to be decreed to be an innocent and *bona fide* purchaser for value of all its railroad property mentioned and described in its said original bill as of a date when the same had not been assessed for taxes for the years 1879, 1880, and 1881, and when the same could not have been so assessed under any law then in force in the State of Florida, and that all of said railroad property in the hands of your orator

ought to be decreed to be exempt from and not subject and liable to the taxes so assessed against it, as herein aforesaid, for the years 1879, 1880, and 1881, and your orator is advised and insists that under the aforesaid circumstances the said last-mentioned final decree, in consequence of the discovery of such new matter aforesaid, ought specially to be reviewed in so far as the same declares your orator's line of railroad from Jacksonville to Chattahoochee, with branches to St. Mark's and Monticello, subject and liable to the payment of the taxes so assessed against it for the years A. D. 1879, 1880, and 1881, and that the first decree rendered on November 25th, 1893, in said cause by his honor John F. White, judge of the 3rd judicial circuit of Florida, in so far as it declares the railroad property of your orator exempt from and not subject to the payment of the taxes assessed against it for the years 1879, 1880, and 1881, and in so far as it enjoins and restrains the defendants from selling or attempting to sell the same for the payment of such taxes, ought to stand and be established and confirmed; and for effectuating the same the said several proceedings, which became abated as to the former defendant, William D. Bloxham, by the expiration of his term of office as comptroller of the State of Florida, should stand and be reviewed against his successor, the said William H. Reynolds, as comptroller of the State."

Defendants answered this bill of review and, admitting to be true the recital of the previous proceedings in the suit, denied much of the new matter above quoted and called for proof thereabouts, and denied "that the new matters alleged in the bill of review were not known to the plaintiff, or by the exercise of due and reasonable diligence could not have been discovered and produced at the hearing on the original bill" (pp. 182–184), and, replication having been filed (p. 185), the cause was referred to an examiner to take testimony (p. 186). Testimony was taken (pp. 187–215) and the cause set down for hearing (p. 215), and thereafter, on January 6, 1900 (p. 216),

the circuit court entered its final decree in the cause, which is set forth at large in this brief (p. 6, *ante*).

On appeal this decree was also reversed by the State supreme court (Record, p. 222; see p. 8, *ante*).

ASSIGNMENT OF ERRORS.

1. IT WAS ERROR ON THE PART OF THE SUPREME COURT OF FLORIDA BY ITS DECREE OF MARCH 19, 1895 (pp. 44, 45), TO REVERSE SO MUCH OF THE DECREE OF THE CIRCUIT COURT FOR LEON COUNTY, RENDERED NOVEMBER 25, 1893 (pp. 39–41), AS HELD THAT THE STATUTE OF FEBRUARY 12, 1885 (chapter 3558, Laws of Florida), UNDER WHICH THE ASSESSMENTS AND PROCEEDINGS COMPLAINED OF WERE MADE AND HAD, WAS A SPECIAL STATUTE FOR THE COLLECTION OF GENERAL REVENUE AND WAS UNCONSTITUTIONAL AND VOID.

2. IT WAS ERROR ON THE PART OF THE SUPREME COURT OF FLORIDA, BY ITS DECREE OF MARCH 19, 1895 (pp. 44, 45), TO REVERSE SO MUCH OF THE DECREE OF THE CIRCUIT COURT FOR LEON COUNTY, RENDERED NOVEMBER 25, 1893 (pp. 39–41), AS HELD THAT THE TAXES WERE NOT LIENS AGAINST THE SEVERAL LINES OF RAILROAD SOUGHT TO BE SUBJECTED TO THE PAYMENT THEREOF AND WERE NOT ASSESSABLE AGAINST THE FLORIDA RAILWAY AND NAVIGATION COMPANY FOR THE YEARS 1879, 1880, AND 1881, AND ENJOINED THE DEFENDANTS BLOXHAM AND PEARCE FROM SELLING OR ATTEMPTING TO SELL SAID RAILWAY OR ANY PART THEREOF FOR THE TAXES FOR SAID

YEARS, OR FROM IN ANY MANNER INTERFERING WITH SAID RAILWAY OR ATTEMPTING TO COLLECT SAID TAXES.

3. IT WAS ERROR ON THE PART OF THE SUPREME COURT OF FLORIDA BY ITS DECREE OF MARCH 17, 1897 (p. 66), TO REVERSE THE DECREE OF THE CIRCUIT COURT FOR LEON COUNTY RENDERED FEBRUARY 26, 1896 (p. 63), OVERRULING THE DEMURRER TO COMPLAINANT'S SUPPLEMENTAL BILL IN THE NATURE OF A BILL OF REVIEW AND REMANDING THE CAUSE TO SAID CIRCUIT COURT WITH INSTRUCTIONS TO DISMISS THE SUPPLEMENTAL BILL IN THE NATURE OF A BILL OF REVIEW.

4. IT WAS ERROR ON THE PART OF THE SUPREME COURT OF THE STATE OF FLORIDA, BY ITS DECREE OF JUNE 26, 1900 (p. 222), TO REVERSE SO MUCH OF THE DECREE OF THE CIRCUIT COURT OF LEON COUNTY, ENTERED JANUARY 6, 1900 (p. 216), AS ENJOINED THE SALE FOR TAXES ASSESSED FOR THE YEARS 1879, 1880, AND 1881 ON THE LINE OF COMPLAINANT'S ROAD FROM JACKSONVILLE TO CHATTAHOOCHE AND BRANCHES, AND DIRECTING COMPLAINANT'S BILL OF REVIEW TO BE DISMISSED.

BRIEF OF ARGUMENT.

I.

In Opposition to the Motion to Dismiss.

That a Federal question was squarely presented by the pleadings and decided adversely to the party claiming the benefit thereof by the State supreme court, seems too plain to require argument. That much at least is conceded by counsel for defendants in error in his brief, as follows:

(P. 5:) "It will be observed that in the original suit a Federal question was raised by the pleadings and decided by the court." * * *

But it is urged in support of the motion to dismiss that such Federal question was not preserved throughout the various subsequent proceedings had in the course of the cause.

We submit that the decree of the State supreme court entered June 26, 1900 (p. 222), was the only final decree entered by that court or any other court in the course of the proceedings which was subject to review in this court on writ of error.

That this decree, as well as the others that preceded it, involved the Federal question upon which the plaintiff in error here relies for relief, is easily demonstrable.

The relief sought by the complainant railroad company was the enjoining of the defendants from collecting taxes levied upon its properties for the years 1879, 1880, and 1881 under retroactive statutes passed in 1885 and 1891.

The Federal questions presented by the pleadings and relied upon here were two—

1. That under the terms of the State law prevailing at the time complainants' predecessor in title became possessed of said properties and executed its deed of trust covering the same the assessment and collection of taxes on properties omitted from the assessment-rolls for prior years was prohibited for more than three years prior to the making of the assessment; that such prohibitory statute entered into and formed a part of the contract between the Florida Railway and Navigation Company, complainants' predecessor in title, and the purchasers of its bonds secured by said deed of trust, and that upon the happening of default and foreclosure of the properties under the terms of said deed of trust its provisions inured to the benefit of the purchaser at such foreclosure sale, and that the laws of 1885 and 1891 directing the assessment of taxes upon complainants' properties for years more than three years anterior to the date of making such assessment (October, 1885) were null and void as in contravention of the prohibition of the Federal Constitution, article 1, section 10:

"No State shall * * * pass any * * * law impairing the obligation of contracts." And—

2. In view of the admitted fact that other real properties of large value in the State had been omitted from the assessment-rolls for the years 1879–1881, and no taxes had been assessed or collected or were attempted to be assessed or collected thereon, the act of 1885 (ch. 3558) was a special statute for the collection of general revenue and did not provide or attempt to provide a uniform, equal, and just assessment

of taxes for such years, and if enforced would deny to persons within the State the equal protection of the laws, contrary to the prohibition of the fourteenth amendment of the Federal Constitution.

The points so raised were both decided in favor of the complainant by the circuit court of Leon county (pp. 39–41), and have constituted the points about which the controversy has revolved to this day.

That the decree of the supreme court of the State reversing the decree of the circuit court and remanding the cause for further proceedings was not such a final decree as could be reviewed in this court on writ of error has been frequently decided.

Grant *vs.* Phœnix Mutual Life Ins. Co., 121 U. S., 118.
District of Columbia *vs.* McBlair, 124 U. S., 320.
Smith *vs.* Adams, 130 U. S., 167.
Meagher *vs.* Minnesota Thresher Co., 145 U. S., 608.
Rice *vs.* Sanger, 144 U. S., 197.
Brown *vs.* Bailer, 146 U. S., 619.
Union Life Insurance Co. *vs.* Kirchoff, 160 U. S., 374.

That decree of the supreme court did not direct the entry of a specific decree by the circuit court, and plainly could not have done so, for without further judicial proceedings were had in the court below it would have been impossible to ascertain the amount of the assessed taxes which were upheld by the supreme court and the amount that was decreed to have been improperly assessed.

But if the finality of this first decree of the State supreme court was in doubt, the doubt should be resolved in favor of the plaintiff in error, in view of the manner in which it was treated in the courts below. It is only in this court that the finality of this decree has been claimed.

McGourkey *vs.* Toledo & Ohio Railway, 146 U. S., 536, 550.

For similar reasons is it also plain that the decree of the State supreme court of March 17, 1897 (p. 66), was not a final decree subject to review in this court.

That decree resolves itself into two branches:

1st. Directing the dismissal of the supplemental bill and the entry of a "decree in accordance with the former judgment of this court."

2d. Granting leave to complainant to apply to the circuit court within ninety days after the entry of such decree to file a bill of review as to so much of said decree as affected the line from Jacksonville to Chattahoochee and branches.

If the decree of 1895 was not final when rendered, it did not become so by being repeated in 1897, and the mandate then issued was but a duplicate of the former one reversing and commanding further proceedings.

It was rendered even less like a final decree than the former one by the addition of the second branch granting leave to file a bill of review, and the principle contended for here is not affected by the fact that the leave so granted only affected a portion of the lines involved, though the fact

is that upon such portion was laid the greater part of the assessments complained of.

The decree of the circuit court of June 19, 1897 (p. 104), was not capable of being reviewed here, because it was not a decree of the highest court of the State in which such decree could be had, nor was it final when entered, and it could have become final only by the complainant electing not to avail itself of the permission of the supreme court to file a bill of review. When leave to this end was applied for and granted by the circuit court all question as to whether it would ever become an appealable decree was at an end. It did not dispose of the entire controversy between the parties. Neither of these decrees directed complainant's bill to be dismissed.

The decree of June 26, 1900, alone fully disposed of the matter in controversy between the parties here sought to be reviewed.

II.

On the Merits.

The complainant, The Florida Central and Peninsular Railroad Company, deraigns its title to the properties referred to in the transcript of record through judicial proceedings and a foreclosure sale made in 1889. This foreclosure sale was the result of the insolvency of the Florida Railway and Navigation Company and its consequent failure to satisfy judgment creditors and pay the interest on its bonded indebtedness of $10,000,000, secured by a deed of trust covering all of its railroad lines and properties. Said deed of trust was executed July 1, 1884, and over one-half of the total bonded indebtedness secured thereby was subsequently

issued and sold for value to *bona fide* purchasers. At the date of said deed of trust and said issue of bonds no taxes had been assessed against the properties of said Railway and Navigation Company for the years 1879, 1880, and 1881, and. under the laws of the State then in force, taxes could only be assessed against such properties as had been omitted from assessment for the three years next preceding the date of levying the assessment. Such restriction on the State's power to levy taxes omitted from assessment was evidently an item of consequence to the purchasers when determining the value of the bonds offered for sale by the company, as it vitally affected the value of the property mortgaged to secure the same, for it was well known that prior to 1881 none of these properties had been sought to be taxed by the State officers since their construction. Many of the lines had been constructed prior to 1864, and the mere assertion of the right on the part of the State in 1884 to assess and collect taxes on said properties for all of such omitted years would speedily have put an end to any market for the bonds then offered, and the exercise of such right would practically have amounted to the confiscation of the various properties in whosesoever hands the same might have come. So it was that the three-year limitation on the taxing power of the State was a valuable element which entered into the terms of every contract made with respect to such properties. Purchasers of the bonds secured by the deed of trust occupied the same relation towards these properties as would have been occupied by a mortgagee under a mortgage thereof.

The deed of trust given to secure the payment of the

bonds was an incident and accessory to them. The purchase and transfer of the bonds carried with it to the purchasers and transferees the benefit of the security and every incident and accessory of it. The trustee in the deed of trust, like a mortgagee, was a purchaser for a valuable consideration. Both occupy the same ground with respect to notice, actual and constructive. They are *bona fide* purchasers until the contrary is made to appear.

Carpenter *vs.* Longan, 16 Wall., 271.

Generally speaking, the rules which apply to legal also apply to equitable estates.

Croxall *vs.* Shererd, 5 Wall., 268.

The law of notice as to the trustee and *cestui que trust* is the same.

New Orleans Canal & Banking Co. *vs.* Montgomery, 95 U. S., 16.

In the absence of notice of any infirmity in the title, the trustee in the deed of trust and the *cestui que trust*, like mortgagees, are to be regarded as *bona fide* purchasers.

Kesner *vs.* Trigg, 98 U. S., 50.

A purchaser with notice of a fraud or infirmity affecting the title may protect himself by obtaining the title of a *bona fide* purchaser for a valuable consideration, without notice, for the *bona fide* purchase purges away the equity from the title in the hands of all persons who may obtain a derivative title from the *bona fide* purchaser.

Rogers *vs.* Lindsey, 13 How., 441.

If either the purchaser or his grantor was a purchaser in good faith, then the purchaser is protected.

Mills *vs.* Smith, 8 Wall., 27.

In both the circuit and supreme court the complainant contended that at the time its predecessor came into possession of the railroad properties described in the bill taxes for the years 1879–1881 had not been assessed against them, and there was no lien in favor of the State for such taxes, for under the laws then in force no tax was a lien upon real estate until assessed, and taxes for omitted years could not be assessed further back than for the three years next preceding the assessment. The act of 1885 was not then on the statute book, and complainant's said predecessors acquired said properties free of any lien for taxes for said years. Upon this view it was contended that the right of the purchaser at the foreclosure of the lien of the mortgage was superior to the right of the State to subject such properties to the payment of back taxes for more than the three years then last past; otherwise the effect of the retroactive statute would be to create a paramount lien for an antecedent tax subsequently laid upon property in the hands of a *bona fide* purchaser for value, and to that extent at least would operate to deprive him of his property without due process of law; and, adverting to this contention, the supreme court of the State, in its opinion, said:

"If the State has the power to pursue property for the payment of taxes when it has ceased to be in the possession or ownership of the persons to whom it belonged during the time for which such assessment was made, in the hands of innocent purchasers for value, such power must arise

from some specific charge or lien upon the property in favor of the State for the taxes thereon. The question therefore arises whether the complainant is such innocent purchaser for value. We do not think that when the time for the assessment and collection of the taxes has passed and the taxing statute affixes no lien to the property, (and) the State has made no assessment or taken any other step to collect the same, that real estate can be pursued for back taxes when it has gone into the hands of innocent purchasers for value.

"The property sought to be taxed in this case is by the laws of this State real estate."

McClellan's Digest, § 30, p. 286; ch. 3099, Laws of Florida, act of 1879, § 2, p. 17.

"Under our laws as they existed prior to the Revised Statutes (1892), there was no lien upon such property for its taxes until fixed by an assessment of the same."

Spratt *vs.* Price, 18 Fla., 289, 301, *et seq.*

L'Engle *vs.* Florida C. & W. R. Co., 21 Fla., 353.

"The only exception to this rule is that provided in various revenue acts, in effect, that assessors might assess real estate which had escaped taxation for any of the preceding years not exceeding three, and that such land should be liable for such back taxes, in whosesoever hands they might come" (p. 237, '8).

Having thus declared the law to be as contended for by complainant, the court disposed of the claim to exemption by holding that complainant was not an innocent purchaser for value. As under the circumstances of this case this was a pure question of law, the propriety of such holding is reviewable in this court.

"It is conceded," says the State supreme court, that the "complainant would not be bound by such assessments if they had been illegal as against the Florida Railway and Navigation Company, its immediate predecessor. Therefore the inquiry arises whether the Florida Railway and Navigation Company was such innocent purchaser

as we have hereinbefore stated could hold the property as against the State's claim for taxes" (p. 238), and the conclusion was reached that it was not; but the argument which led to this conclusion completely ignored the deed of trust executed by the Railway and Navigation Company in 1884, and that the complainant held the property under and as the result of the foreclosure of the lien thereof.

When the bond issue of 1884 was made and the deed of trust to secure the same executed, the taxes for 1879–1881 had not been assessed, and no attempt to assess the same was made until more than three years had elapsed from the expiration of the last so-called "omitted year," and indeed the last of such "omitted years" had elapsed more than three years before the legislature even undertook to authorize such assessment.

The real question in this case is, What title did W. B. Cutting and his associates take by virtue of their purchase at the foreclosure sale? From the authorities above cited it seems to be a logical deduction that they took whatever title the trustee in the deed of trust possessed. They were subrogated to all the rights of the bondholders, and their title under the foreclosure sale related back to the condition of affairs at the date of the deed of trust, viz., July 1, 1884. The title so acquired cut out any subsequent liens which the State might have sought to impress upon the properties by the act of 1885.

If the Railway and Navigation Company, being in possession of the property at the date of the assessment,

was personally chargeable therewith, it may be conceded that the taxes so assessed were a proper charge against its equity of redemption in the property, and if there had been any surplus left after paying the mortgage debt, the same might properly have been subjected to their payment. But it appears from the record that there was no surplus; on the contrary, the amount realized from the sale was not sufficient to pay the accumulated interest on the mortgage debt. To attempt, therefore, by a retroactive statute to make such taxes a charge upon the realty itself, and to attribute to them the character of a superior lien, enforceable against the property even in the hands of a *bona fide* purchaser, is a clear violation of the prohibition of the Federal Constitution against the impairment of an existing contract by a subsequent legislative enactment. If the act of 1885 and the assessments for the years 1879–1881 thereunder be held to be valid, and the taxes so assessed be declared to be a lien against the property, even in the hands of a *bona fide* purchaser, what bar would there be to the passage of further acts by the legislature providing for the assessment and collection of taxes upon these properties for the years from 1868 to 1879, for which years no taxes have been collected? If such course be pursued, what of value would there be left to the bondholders or the purchasers at the foreclosure sales?

The status of the properties at the time the mortgages were executed cannot be altered, so far as the rights of the bondholders are concerned, by subsequent legislation, and as against the bondholders and those claiming by, through, or under them the State should not be permitted by retro-

active legislation to encumber the security for the bonds by any burden which did not exist when the mortgage or deed of trust became effective.

Such legislation is not only retroactive, but it impairs the obligation of the contract between the mortgagor and mortgagee, decreases the value of the security, and in the case at bar, if sustained, would take from the holders of the property acquired in right of the trustee for the bondholders a large sum of money to meet the obligation of a former owner for which the mortgagee was never responsible, and for which the State at the time the mortgage was executed had no lien and no law under which it could acquire one.

But another Federal objection lies to the validity of the act of 1885 (chapter 3558) and the assessments for taxes thereunder. It is averred by the bill of complaint that although there were other real properties of large value in the various counties through which complainant's road ran, which had been improperly omitted from assessment for taxes during the years 1879–1881, and each of them, yet the law of 1885 (chapter 3558) did not attempt to secure a just valuation and assessment for all classes of property, but was enacted to reach only property of the class belonging to complainant, and there was no existing law by which the other classes of omitted property could be assessed for taxes for such years and none has since been passed to remedy such inequality and wrong. This averment was admitted by defendants' answer.

The title of the act of 1885 (chapter 3558) declares it to be "An act to provide for the assessment and collection of

taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment."

This is a clear discrimination against railroad properties in favor of other classes of omitted properties, and denies to the railroad companies owning such properties the equal protection of the laws.

It would seem to be settled beyond argument that corporations are "persons" within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, as well as a denial of the equal protection of the laws.

County of Santa Clara *vs.* Southern Pacific R. R. Co., 118 U. S., 394.

Covington, &c., Turnpike Co., *vs.* Sanford, 164 U. S., 578–592.

Gulf, Colorado, etc. *vs.* Ellis, 165 U. S., 154.

"In almost every State today there is observable a determination and a tendency to impose upon corporations much more than their fair share of the burdens of taxation. This is now done sometimes under the pretense of classification, and sometimes as a franchise or license tax. That these taxes are becoming grossly unjust and oppressive cannot be denied."

Guthrie, The Fourteenth Amendment to the Constitution of the United States, p. 120.

"The question is not whether the State may not claim for grants of privileges and franchises a fixed sum per year, or a percentage of earnings of a corporation—that is not controverted—but whether it may prescribe rules for the valuation of property for taxation which will vary according as it is held by individuals or by corporations."

Field, J., in San Bernardino Co. *vs.* Southern Pac. R. R., 118 U. S., 417, 422.

The attempt of the legislature of Florida by the act of 1885 (chapter 3558) to levy taxes for prior years upon railroad property to the exclusion of other real properties owned by individuals, which had also escaped taxation for such years, was an unlawful discrimination, grossly unjust and oppressive. It was a "clear and hostile discrimination against particular 'persons' and classes * * * of an unusual character, unknown to the practice of our governments" and obnoxious to the constitutional prohibition.

The discrimination complained of in this case is similar to that inveighed against in "The Santa Clara Railroad Tax Cases," 13 Fed. Rep., 722, which was held to be illegal, and the act authorizing it to be unconstitutional and void.

In Northern Pacific Railroad Co. *vs.* Walker, 47 Fed. Rep., 681, 685, certain lands belonging to railroad companies had been exempted from taxes simply because they were owned by such companies, and it was there held that property of the same kind and in the same condition cannot be divided into different classes for purposes of taxation and taxed by a different rule because it belongs to different owners, whether natural persons or corporations.

While it is quite true that absolute uniformity or equality of taxation cannot, in the nature of things, be expected or attained under any system, nevertheless substantial equality is attainable and is required by the supreme law of the land, and when the inequality is as palpable as it is in the case at bar, going to the length of imposing taxes for past years as to which there had been no assessment upon real prop-

erty owned by railroad companies, to the exclusion of all other real properties by whomsoever owned, the discrimination is serious, and it is the duty of the courts to interfere.

Upon either one of the above grounds the judgment of the State supreme court should be reversed.

III.

Has the Suit Abated for Want of Parties?

This action is founded upon the warrant issued October 5, 1892 (p. 21), by W. D. Bloxham, then comptroller of the State, to restrain him from doing certain acts in his official capacity. Under the law the sheriff acts only by virtue of the authority conferred by the comptroller's warrant and under his direction. The suit was brought to restrain said Bloxham and the sheriff, acting under his orders and by his authority, from selling the complainant's property to collect the taxes illegally assessed.

During the pendency of the proceedings in the State courts Comptroller Bloxham vacated the office of comptroller, and William H. Reynolds became comptroller in his stead. So far as appears from the record, Reynolds took no hand in these proceedings. Certainly he issued no further warrant to the sheriff. Nevertheless he was substituted as party defendant in Bloxham's place, apparently without his consent or acquiescence, and thereby became liable to respond at least in costs for his predecessor's wrong.

Since the case has been pending in this court Reynolds has died, and his successor in office, at his own request, has

been substituted as party defendant in his stead. There is no statute of Florida which authorizes, in pending suits against public officers who have died or retired from office, the substitution of their successors in order to prevent the abatement of such suits, and upon the authority of—

Warner Valley Stock Co. *vs.* Smith, 165 U. S., 28;
Smith, Sec'y, *vs.* Reynolds, 166 U. S., 717;
U. S. *ex Rel.* Bernardin *vs.* Butterworth, 169 U. S., 600,

it would seem that the decrees of the supreme court of Florida herein should be reversed and the cause remanded to that court, with instructions to that court to remand the cause to the circuit court for Leon county, with instructions to dismiss the bill of complaint for want of parties.

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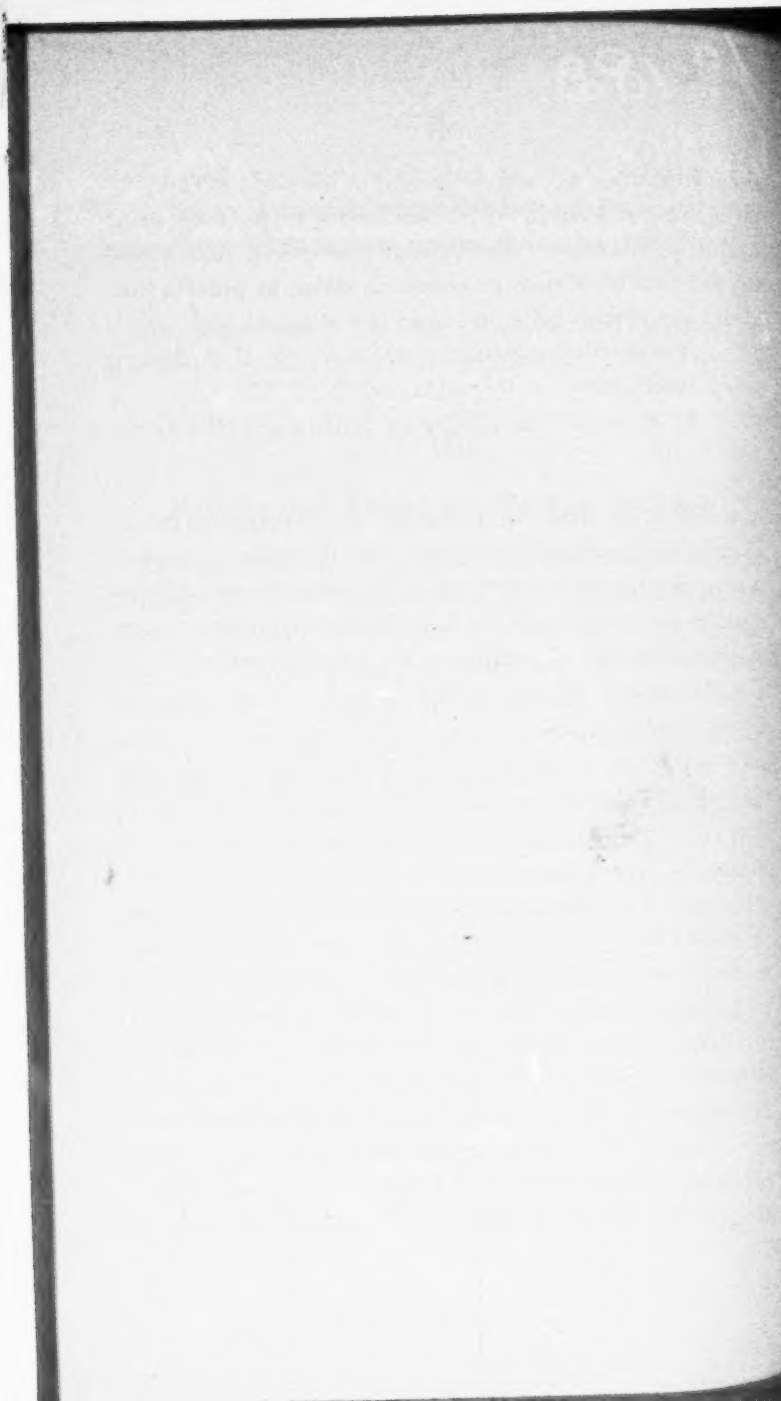
Wayne MacVeagh,
John A. Henderson,
Of Counsel.



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No. 183.

Sup. Ct of Clarke, M Kenney
Isaac v Henderson for P.E.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Nov. 25, 1901.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALONZO C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

THOMAS L. CLARKE,
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WAYNE MACVEAGH,
JOHN A. HENDERSON,
Of Counsel.

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Supreme Court of the United States.

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No. 183.

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vs.

ALONZO C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY.

Supplemental Brief for Plaintiff in Error.

In the reply brief for defendant in error the point is made that prior to the date of the bond issue by the Florida Railway and Navigation Company (July 1, 1884) the legislature of Florida had by the joint resolution of March 4, 1881 (see Reply Brief, p. 4), "declared its belief in the liability to taxation of these lines of railroad, and had directed the

governor and the comptroller of the State to institute suit to test their liability to such taxation."

It needs but a glance at the resolution itself to demonstrate that it has no bearing upon the present controversy. By its title it is declared to be a joint resolution "requiring the governor and comptroller to institute legal proceedings against all railroad companies *who have refused to pay taxes on their railroad property.*"

In the preamble it is recited that "Whereas said railroad companies *refuse to pay taxes* on the said railroad property," and by section 1 it is provided "that the governor and comptroller be, and they are hereby, required to institute legal proceedings against said railroad companies *who have refused to pay taxes on their railroad property,*" etc.

As the properties of the railroad companies which by consolidation or combination formed the Florida Railway and Navigation Company had not been assessed for taxes prior to October, 1885, and consequently had not *refused to pay taxes,* they were not within the purview of the joint resolution.

At the date of the bond issue and deed of trust to secure the same, viz., July 1, 1884, no taxes had been assessed against any of these properties, nor was there any law upon the statute books which permitted them to be assessed for past years unless section 26 of chapter 3413 of Laws of 1883, authorizing the tax assessors to assess lands previously omitted for "three years' arrears of taxes," was applicable to railroad properties.

Counsel for defendants in error insist that that law has no application to such properties. Hence we reply that

then there was not in 1884 any law in Florida which permitted tax assessors or any other official to assess taxes upon railroad properties for past years. The joint resolution of 1881 clearly did not confer any such power, and it is equally clear that chapter 3039 of the Laws of 1879 (see Reply Brief, p. 6), referred to by defendants in error, did not do so.

Our opponent's contention, then, is that in 1884, when the lien of the deed of trust or mortgage under which plaintiff in error claims by virtue of foreclosure proceedings was fastened upon these properties, there was no law of Florida which in any shape or form authorized the assessment of any back taxes upon railroad properties, and that no such law was enacted until the lien of the deed of trust herein was almost one year old, and more than $5,000,000 of the bonds secured thereby had passed into the hands of innocent purchasers for value.

By the law of 1885 the State attempted to authorize the assessment of taxes for 1879–1881, but only upon property belonging to railroad companies, though it appears from the record that other properties of like class, *i. e.*, real estate belonging to individuals and owners, not railroad companies, had not been assessed for taxes for such years.

It surely cannot be "due process of law" for the State of Florida in 1885 to arbitrarily impose a burden theretofore unheard of upon security-holders who in 1884 had invested their money upon the faith of a title then clear of such burden.

It surely cannot be less than a denial of the equal protection of the laws for the State of Florida in 1885 to im-

pose burdens theretofore unheard of upon the property of railroad companies, which under the laws of Florida is real estate (R., pp. 237, 238), while permitting other real estate, otherwise owned, to escape such burdens.

THOMAS L. CLARKE,
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WAYNE MACVEAGH,
JOHN A. HENDERSON,
Of Counsel.

No. 463. 183.
Motion to Dismiss
Filed Jan. 3, 1901.

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Supreme Court of the United States.

October Term, 1900.

No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Motion to Dismiss Writ of Error.

W. B. LAMAR,

ATTORNEY-GENERAL FOR THE STATE OF FLORIDA,
COUNSEL FOR DEFENDANTS IN ERROR.

THE H. & W. B. DREW COMPANY JACKSONVILLE, FLA. 60888

Supreme Court of the United States.

October Term, 1900.

No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Motion to Dismiss Writ of Error.

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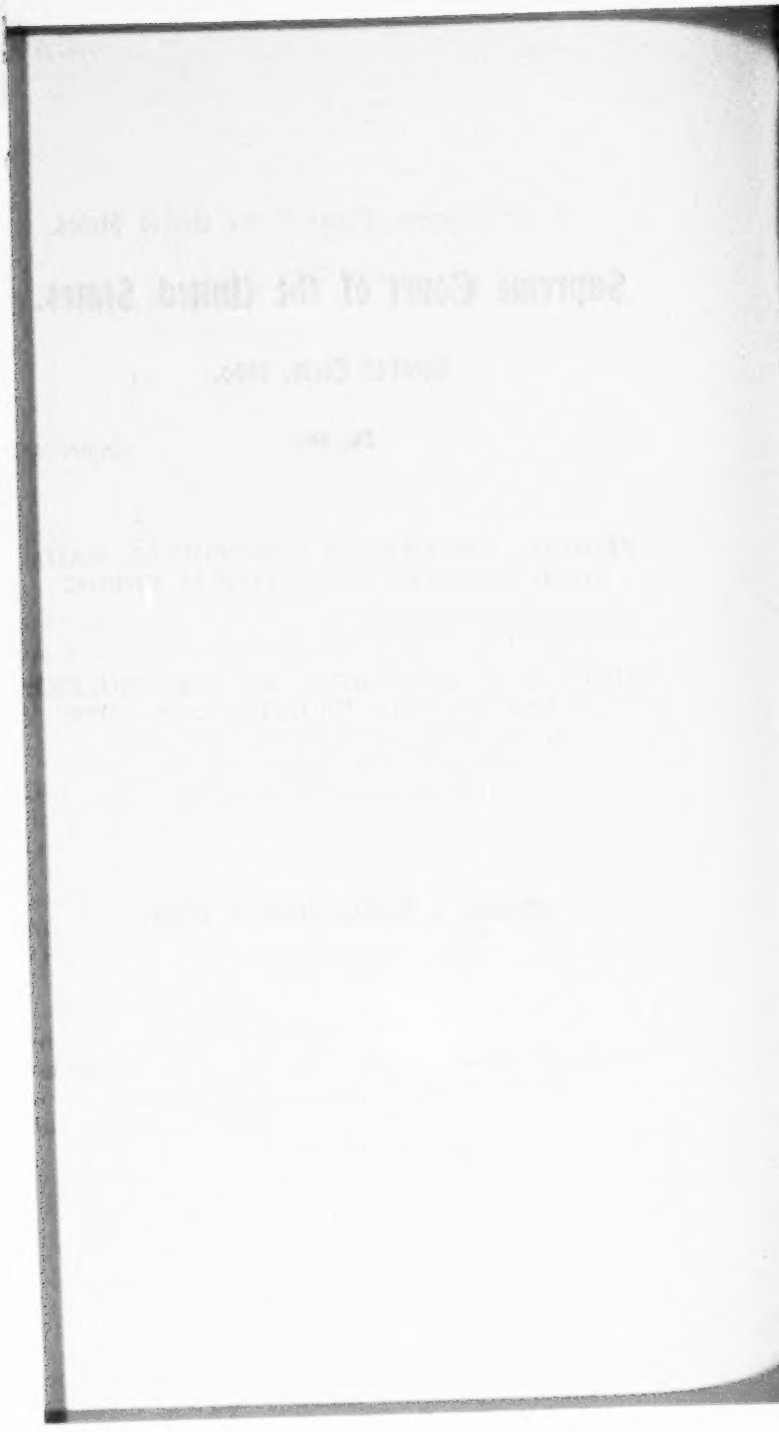
COUNSEL FOR DEFENDANTS IN ERROR.



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In the Supreme Court of the United States.

October Term, 1900.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY,
Plaintiff in Error,
VS.
WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE,
Defendants in Error.

Number 463.

Comes now the defendants in error herein by Wm. B. Lamar, their counsel appearing in that behalf, and moves the Court to dismiss the writ of error in the above entitled cause upon the following grounds, to-wit:

FIRST—Because the judgment or decree which is brought up for examination and review, is the judgment or decree of the Supreme Court of one of the United States, to-wit: The Supreme Court of the State of Florida, and no federal question was involved in the case or appeared or was raised upon the record or was decided by said Supreme Court of Florida adversely to the plaintiff in error which will entitle this Court to examine and review the said judgment or decree of the said State Court.

SECOND—Because the said writ of error was not brought within two years after the entry, by the said Supreme Court of the State of Florida, of the judgment or decree, in the original cause, which is brought up for examination and review.

And the said defendants in error, by counsel as aforesaid, also moves the Court to affirm the said judgment or decree of the said Supreme Court of the State of Florida, which is brought up for examination and review because, although the record in the said cause may show that this Court has jurisdiction in the premises, yet it is manifest that the said writ of error was sued out for delay only.

W. B. LAMAR,
Counsel for defendants in error for the purposes of these motions.

To Hons. John A. Henderson, Wayne McVeagh and Frederick D. McKenney, Counsel for Plaintiff in Error:

Please take notice that on the twenty-first day of January, 1901, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Annexed hereto is a copy of the brief of argument to be submitted with the said motions in support thereof.

W. B. LAMAR,
Counsel for defendants in error for the purposes of the motions.

No. 463. 183

Office Supreme Court U.S.
FILED
JAN 7 1901
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Clerk.

Brf. of Lamar for D. E. (on mo.)

Supreme Court of the United States.

October Term, 1900.

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No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Brief for Defendants in Error Upon Motion to Dismiss Writ of Error.

W. B. LAMAR,

ATTORNEY-GENERAL FOR THE STATE OF FLORIDA,
COUNSEL FOR DEFENDANTS IN ERROR.

THE H. & W. B. DREW COMPANY JACKSONVILLE, FLA. 80987

Supreme Court of the United States.

October Term, 1900.

No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Brief for Defendants in Error upon Motion to Dismiss Writ of Error.

W. B. LAMAR,

ATTORNEY-GENERAL FOR THE STATE OF FLORIDA,
COUNSEL FOR DEFENDANTS IN ERROR.

Supreme Court of the United States.

October Term, 1900.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY,
Plaintiff in Error,
VS.
WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF THE STATE OF FLORIDA.
Defendants in Error.

Number 463.

Brief of Counsel for Defendants in Error.

The motion to dismiss the writ of error is predicated upon two grounds, viz:

FIRST—because no federal question was involved in the case, or was raised in the record, or was decided by the Supreme Court of the State of Florida adversely to the plaintiff in error;

SECOND—because the writ of error was not brought within two years after the entry of the final judgment or decree of the Supreme Court of the State of Florida.

The return to the writ of error embraces a transcript of the record of the original bill and the proceedings thereon, a transcript of the record of the supplemental bill in the nature of a bill of review and the proceedings thereon, and a transcript of the record of the bill of review with the proceedings thereon. The bill of review does not constitute a part of the original suit but is an independent proceeding. Cole vs. Miller, 32 Miss. 89; 2 Hoff. Chr. Pr. 12.

Therefore the return to the writ of error embraces at least two separate and distinct transcripts of the record of two separate and independent proceedings. It occurs to us that a writ of error should have been brought in each one of these suits in order to bring

them both to this Court for examination and review. However for the purposes of this motion we will treat the transcripts of the record returned here as those of two separate and independent proceedings, and also as that of one suit.

Adverting then to the transcript of the record of the bill of review and the proceedings thereon it will be observed that this bill is predicated upon new matter discovered since the final decree and is limited to that; and that the decision and final decree thereon by the Supreme Court of the State of Florida relates to a matter of practice only and does not involve any federal question whatever. Therefore this Court has no jurisdiction to examine and reverse said final judgment or decree.

125 U. S. 18; 127 U. S. 216; 129 U. S. 506; 132 U. S. 554; 133 U. S. 65; 138 U. S. 496; 123 U. S. 540; 152 U. S. 377; 153 U. S. 436; 147 U. S. 490; 154 U. S. 130; 159 U. S. 660; 150 U. S. 18; 163 U. S. 207; 162 U. S. 283; 170 U. S. 182.

The final decree in the original suit was made and entered by the Supreme Court of the State of Florida on the 17th day of March, A. D. 1897, and the writ of error was brought on the 24th day of October, A. D. 1900, and more than two years had elapsed after the entry of said decree and before the bringing of said writ of error; consequently said writ was barred. Rev. Stat. U. S. Sec. 1008.

If the writ is barred by the statute the objection may be made by motion. Brooks vs. Norris, 11 Howard 204.

But treating the bill of review and the proceedings thereon as constituting a part of the original suit and the transcripts of the records as those of one suit only; nevertheless the motion ought to prevail because the questions involved in this case are identically the same as those which were presented and decided by this Court in the case of the Louisville & Nashville Railroad Company vs. Palmes, 109 U. S. 244, and the decision of this Court in that case has been adopted and followed by the Supreme Court of Florida in deciding this case. Bloxham et al. vs. Florida Central & Peninsular Railroad Company, 35th Florida Reports, 625.

W. B. LAMAR,

Attorney-General of Florida and Solicitor for Defendants.

Office Supreme Court
FILED
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JAMES H. McKENNEY

No. 183.

Brf. of Lamar for D. Es

Filed Oct. 16, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 183

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

W. B. LAMAR,
Attorney General of Florida and Solicitor for Defendants in Error.

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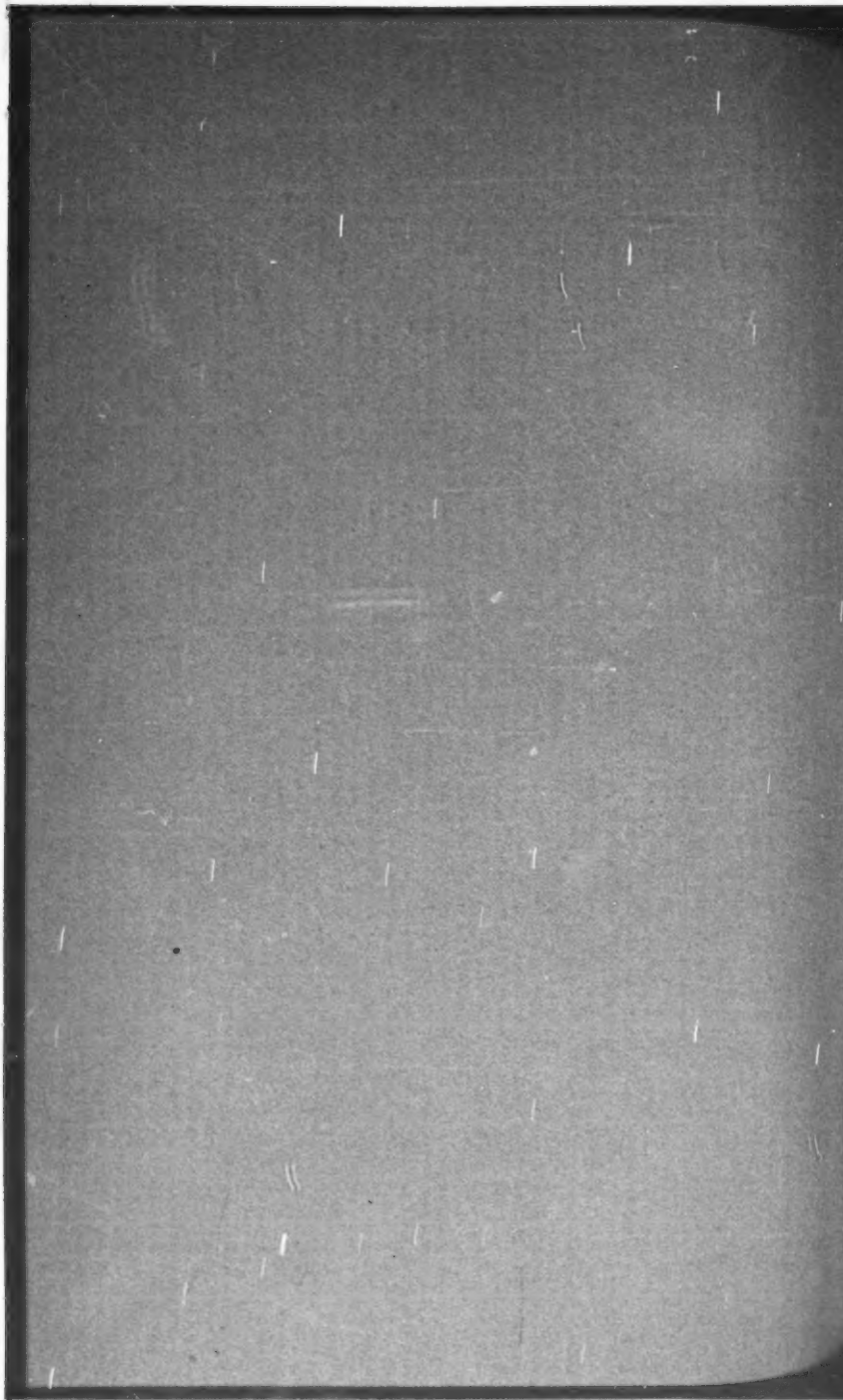

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 463.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

In support of the first ground of our motion to dismiss the writ of error we will state, in addition to what has already been stated in our brief which was filed therewith, that the supreme court of Florida, at its January term, 1895, made a final decision of the original case and left nothing for the circuit court to do except to enter a decree in compliance with the mandate sent down.

Bloxham, compt., and Pearce *vs.* F. C. & P. R. R. Co., 35 Fla. Repts., 625.

Printed Record, pp. 227 *et seq.*

Nevertheless the circuit court permitted the railroad company to file a supplementary bill, in the nature of a bill of

review, without the leave of the supreme court of Florida; and afterward, on appeal, the said supreme court directed the circuit court to dismiss this bill because it was filed without its leave, and to enter a final decree in accordance with its former judgment, and at the same time granting an order permitting the railroad company, within ninety days after the entry of such decree by the circuit court, to apply to the said circuit court for leave to file a bill of review to the *extent of the line of railroad from Jacksonville to Chattahoochee and branches, on account of alleged newly discovered matter* (Bloxham, compt., and Pearce *vs.* F. C. & P. R. R. Co., 39 Fla. Repts., 243; printed Record, pp. 245 *et seq.*).

The circuit court afterwards, on the 19th of June, 1897, entered a final decree in accordance with the final judgment of the supreme court of Florida, rendered at the January term thereof, 1895 (printed Record, pp. 136, 137).

And on a petition for that purpose the circuit court granted the railroad company leave to file a bill of review not only to so much of the decree as affected the line of railroad from Jacksonville to Chattahoochee and branches, but also to so much of said decree as affected all of the lines of railroad involved in said litigation; and not only on the ground of newly discovered matter, but also for errors of law apparent on the record (printed Record, pp. 141 and 142).

This was entirely beyond the scope of the permission given by the supreme court of Florida; and the circuit court had no jurisdiction or authority to entertain an application to review said decree as to any other railroad than the line from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, or upon any other ground than that of newly discovered matter.

And a writ of prohibition was issued by the supreme court of Florida forbidding said circuit court from exercising jurisdiction of said bill of review beyond the scope of the permission granted by it (State of Florida *ex rel. vs.* John F. White, judge, 40 Fla. Repts., 297).

Therefore the bill of review was thus limited to that part of the decree which affected the line of railroad extending from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, on account of newly discovered matter only. It will be observed that the newly discovered matter which is alleged in said bill of review relates exclusively to the question whether Edward J. Reed and associates, from whom the plaintiff in error deraigned its title to the line of railroad from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, became *bona fide* purchasers thereof for a valuable consideration, without notice of any tax lien thereon for the years 1879, 1880, and 1881, and the only question which was decided by the supreme court of Florida in this review suit was whether the new matter alleged in the bill of review was not known, or could not by the use of reasonable diligence have been known, to this plaintiff in error or its agents in time for use before the hearing of the original cause (Reynolds *et al. vs.* F. C. & P. R. R. Co., Fla. Repts; printed Record, p. 254).

This question was decided adversely to this plaintiff in error, and the court deemed it unnecessary to decide upon the existence, character, or effect of such new matter.

It is apparent, therefore, that no Federal question was involved in the proceedings and decided by the supreme court of Florida in the review suit; and the contention by the plaintiff in error that the Federal question which was raised by the pleadings in the original suit was preserved, repeated, and enlarged in the bill of review, we think, is not supported by the record.

In framing a bill of review it is necessary to state the former bill and the proceeding thereon; the decree and the point in which the party exhibiting the bill of review conceived himself aggrieved by it, and the ground of law or new matter discovered upon which he seeks to impeach it (Mitford's Eq. Pl., 106).

And this plaintiff in error in framing his bill of review

has complied with this requirement, and stated therein the former or original bill and the proceedings thereon, the decree and the point in which it conceived itself aggrieved by it, and the new matter discovered upon which it seeks to impeach it. Although the Federal question which was involved in the original suit and therein decided by the supreme court of Florida was *recited* in the bill of review, nevertheless this question was not again raised by the pleadings in the review suit and decided therein by the supreme court of Florida. Upon an examination of the bill of review it will be observed that the plaintiff in error did not complain of the final decree of the circuit court because the Federal question which was raised by the proceedings in the original suit had been decided adversely to it. That was not the point of grievance, but the point of grievance was the decision of the court that *Edward J. Reed and associates, from whom the plaintiff in error deraigned its title to the railroad from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, were not bona fide purchasers thereof for a valuable consideration, without notice of any tax lien thereon for the years 1879, 1880, and 1881*, and the newly discovered matter was alleged in the bill of review for the purpose of impeaching said final decree in this particular. Therefore we contend that no Federal question was raised by the pleadings in the review suit. But even if such a question had been raised by said pleadings in the review suit it was not decided by the supreme court of Florida, and in the absence of such decision the decree of said supreme court is not reviewable by this court on a writ of error. Besides, the order of the chief justice of the supreme court of Florida allowing this writ of error limits it to the final decree of said supreme court on the 26th day of June dismissing the bill of review (printed Record, p. 223).

Furthermore, the attorneys for the plaintiff in error admit in their brief, on pages 7 and 8, that said writ of error was allowed to review the said decree of June 26, 1900, but con-

tend that this was the only final decree which could have been reviewed by this court. Be that as it may, this writ of error, being limited in its operation to a review of the decree of the supreme court of Florida rendered on the 26th day of June, 1900, cannot be extended in its operation to a review also of the decree of said court rendered on the 19th day of March, 1895, for such an extension of its operation would defeat the limitation prescribed by section 1008, United States Revised Statutes.

Both of these decrees were rendered by the same court, between the same parties, and are final. But the question raised by the pleading and decided in the original suit, in which the court rendered its final decree on the 19th day of March, 1895, and those raised by the pleadings and decided in the review suit, in which the court rendered its final decree on the 26th day of June, 1900, are entirely different. It will be observed that in the original suit a Federal question was raised by the pleadings and decided by the court; but in the review suit no Federal question was raised by the pleadings and decided by the court. (See printed Record, p. 260.)

In this connection we will offer this observation, that after the supreme court of Florida had rendered its final decree on the 19th day of March, 1895, this plaintiff in error filed its petition for a rehearing, but the court denied the prayer thereof (printed Record, pp. 46 and 48).

And no other or further proceedings were taken or had to change, modify, or reverse said final decree.

We will offer this further observation that the bill of review, which was afterwards filed by this plaintiff in error, has no relation to the said final decree of the supreme court of Florida, which was rendered on the 19th day of March, 1895, and does not seek to review, change, modify, or reverse it, but has relation exclusively to the final decree which was rendered by the circuit court of Leon county of the State of Florida on the 19th day of June, 1897, and seeks

to review, change, modify, and reverse it, upon the *ground of alleged newly discovered matter* (printed Record, pp. 177 and 178—1880 and 1881).

Therefore this bill of review and the proceedings thereon did not prevent this plaintiff in error from suing out a writ of error to the said final decree of the supreme court of Florida, which was rendered on the 19th day of March, 1895, within two years after the entry thereof, and bringing it before this court for a review of the Federal question which was therein decided.

No writ of error has ever been allowed or sued out to said final decree by this plaintiff in error, and in the absence of such writ said decree is not reviewable by this court.

But in case the motion to dismiss the writ of error should be denied, we will now discuss the several assignments of error.

The denial by the supreme court of Florida of the exemption of the Florida Central and Peninsular railroad from taxation constitutes the first assignment of error.

The plaintiff in error contended that these railroads were exempted from taxation under section 18 of "the internal improvement act," chapter 610, Laws of Florida of 1855, which reads as follows:

"SEC. 18. *Be it further enacted*, That the capital stock of any railroad company accepting the provisions of this act, shall be forever exempt from taxation, and the roads, their fixtures and appurtenances, including workshops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the roads, shall be exempt from taxation while the roads are under construction, and for the period of thirty-five years from their completion, and that all the officers of the companies, and servants, and persons in the actual employment of the companies, be and are hereby exempt from performing ordinary patrol

or militia duty, working on public roads and serving as jurors."

And that such exemption or immunity was continuing and was an incident of the property itself, and followed it into the hands of subsequent purchasers, including the plaintiff in error, and was not a personal privilege, limited to the corporation that built said railroads.

The identical questions involved in this contention were decided by the supreme court of Florida at the June term thereof, 1882, in the case of Palmes *vs.* Louisville and Nashville Railroad Company (19th Fla. Repts., 231), adversely to the case of this plaintiff in error, and that decision was afterwards brought to this court by writ of error for review, and affirmed in November, 1883 (Louisville and Nashville Railroad Company *vs.* Palmes, 109 U. S. Repts., 244).

These decisions, we think, settle these questions and put them beyond further controversy.

The plaintiff in error further contended that these railroads were exempted from the taxes assessed on them because it and those from whom it deraigned title were *bona fide* purchasers thereof for a valuable consideration without notice of any tax lien thereon for the years 1879, 1880, and 1881.

The supreme court of Florida decided that neither the plaintiff in error nor those from whom it deraigned its title were such *bona fide* purchasers of said railroad. This was a decision of a question of *fact*, and not of law, and involved no Federal question whatever; consequently this court will not review it.

The decision by the supreme court of Florida that so much of the original bill as sought a recovery of the sum of $140,812 for the taxes which were paid by the Florida Railway and Navigation Company was a suit against the State

and should be dismissed constitutes the second assignment of error.

The judgment of the court in this particular is correct, whether the reasons assigned therefor are erroneous or not. It is true that the judgment is based upon the fact that the suit was against the State; but even if this was not so, yet it could be supported upon another ground. If the plaintiff in error was entitled to recover this money, his remedy was by an action at law and not by a suit in equity (Singer Manfg. Co. *vs.* Wright, 141 U. S. Repts., 697; Preston *vs.* Preston, 12 Pick., 14).

But it is apparent that no Federal question was involved in this decision. Therefore this court will not review it.

The decision by the supreme court of Florida that the statute of Florida, chapter 3558, Laws of 1885, was constitutional and valid constitutes the third assignment of error.

It appears also that no Federal question is involved in this decision, and likewise none is involved in the remaining assignments of error, numbered 4, 5, 6, and 7. Therefore this court will not review them.

We can discover no merit in any of the assignments of error, and necessarily conclude that this writ of error was prosecuted for delay only.

W. B. LAMAR,
Attorney General of Florida and
Solicitor for Defendants in Error.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, Plaintiff in Error,

vs.

LONZO C. GIBSON, as Comptroller of the State of Florida, and JOHN A. PEARCE, as Sheriff of Leon County, Defendants in Error.

BRIEF IN REPLY FOR DEFENDANTS IN ERROR.

WM. B. LAMAR,
Attorney General of Florida.
GEO. H. LAMAR,
Counsel for Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1900.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 183.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ALONZO C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, DEFENDANTS IN ERROR.

BRIEF IN REPLY FOR DEFENDANTS IN ERROR.

STATEMENT.

Three bills for relief were brought by the plaintiff in error, in the circuit court of the second judicial circuit of Florida (original bill, supplemental bill in nature of bill of review, and bill of review) against an assessment of back and unpaid taxes on certain lines of its road for the years 1879, 1880, and 1881.

The original bill was disposed of, upon appeal, by the supreme court of Florida, by deciding all questions raised in said bill against plaintiff in error. The supplemental bill,

in nature of a bill of review, was dismissed on appeal by the supreme court of Florida, because brought in the lower court without its consent. And the bill of review was dismissed, on appeal, by the supreme court of Florida, merely upon a question of chancery practice.

These lines of road extend from Jacksonville to Chattahooche, from Fernandina to Cedar Keys, and from Waldo to Ocala, all in the State of Florida. The plaintiff in error here was not organized as a corporation and let into possession of these lines of railroad, liable to assessment and taxation for such years 1879, 1880, and 1881, until May 1, 1889. (See page 13 of brief for plaintiff in error, second paragraph.)

So it appears that the plaintiff in error took said properties with full knowledge of the intention of the legislature of the State of Florida to assess and collect these back and unpaid taxes upon said lines of railroad, and with the assessment for such years *impressed upon said lines of railroad.* The statute of the State of Florida is as follows (Laws of Florida, 1885, chapter 3558):

"An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880, and 1881, as to which there was no assessment.

"The people of the State of Florida represented in senate and assembly do enact as follows:

"SECTION 1. That in all cases in which any railroad or the properties thereof belonging or appertaining in this State in the tax years commencing March 1, 1879, 1880 and 1881, or any of such years were not assessed for taxes for such years it shall be the duty of the controller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes and twenty per centum of the taxes so assessed for said years and now unpaid, shall be collected at the same time the taxes for the year 1885 shall be assessed and collected and each year thereafter an additional twenty per cent. of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid.

"The taxes to be assessed under this act shall be the same in amount as they would have been had they been assessed in such years, or any of them, as to which there was a failure to assess.

"Approved February 12, 1885."

The plaintiff in error cannot contend, with any degree of fairness, that it had no knowledge of the legislative intent, in the State of Florida, to subject these lines of roads to taxation. This statute was full notice to the plaintiff in error before it purchased said lines of railroad. These lines of railroad (*supra*) were assessed for taxation by the comptroller of Florida in accordance with the above statute, but plaintiff in error here seeks to defeat the State's claim for these back taxes upon the ground that it took, by purchase, the properties of the Florida Railway and Navigation Company, and that this company held these properties before the passage of the statute of 1885, which is set out above. But the Florida Railway and Navigation Company was organized on the 29th day of February, A. D. 1884. (See page 11 of brief for plaintiff in error, paragraph 3 thereof.)

The lines of railroad sought to be subjected to the collection of the taxes involved in these proceedings for the years 1879, 1880, and 1881 were constituent lines of road of said Florida Railway and Navigation Company, and said lines of railroad were originally built under the Internal Improvement Act of the State of Florida, and at the time of the organization of said Florida Railway and Navigation Company these constituent lines of railroad were liable to taxation under the laws of the State of Florida (Louisville and Nashville R. R. Co. *vs.* Palmez, 109 U. S. Reports, p. 244. See also Session Laws of Florida of 1879, secs. 45 and 46, chapter 3039), and the legislature of Florida, before such organization of the Florida Railway and Navigation Company, by joint resolution, had declared its belief in the liability to taxation of these lines of railroad, and by said resolution had directed the governor of the State of Florida

and the comptroller thereof to institute proceedings to test their liability to such taxation. Said joint resolution is as follows (Session Acts of Florida, A. D. 1881, page 217):

"*Joint resolution requiring the governor and comptroller to institute legal proceedings against all railroad companies who have refused to pay taxes on their railroad property for the collection of taxes.*

"Whereas there are several railroad companies in this State operating between four and five hundred miles of road at the estimated value of $5,000,000; and whereas, said railroad companies refuse to pay taxes on the said railroad property, claiming said roads are exempt from taxation under the provisions of the act commonly called the internal improvement act of 1855; and whereas, it is believed by lawyers whose opinions are entitled to respect, that the guarantee given as to taxation under that act only extended the exemption from taxation to the original companies owning said roads and did not pass with the roads into the hands of the present owners:

"Therefore, the people of the State of Florida represented in senate and assembly do resolve as follows:

"SECTION 1. That the governor and comptroller be, and they are hereby required to institute legal proceedings against said railroad companies who have refused to pay taxes on their railroad property, and test the validity of the claims of said companies of their exemption from taxation and, if necessary, to take the case to the highest courts of the land.

"SECTION 2. The governor and comptroller are hereby authorized to employ counsel other than the attorney general, to prosecute said legal proceedings, whose compensation other than necessary expenses shall be contingent upon and paid out of the money which may and shall be realized whether by State or counties from taxes now and to become due for the year 1881 as the result and consequences of the labor and services of such counsel. The said compensation not to exceed 15 % of the amount so collected.

"SECTION 3. That the governor and comptroller shall also take steps to inquire whether or not any railroads in this State claiming exemption from taxation aforesaid are exercising a franchise of public carriers without authority of

law, and if it be found that any such railroad or railroads are so unlawfully exercising such franchise, then, in that case, the governor and comptroller shall institute the proper proceedings at law or in equity to restrain and prevent such unlawful exercise of such franchise by such railroad or railroads unless such railroad or railroads shall agree to hereafter waive its or their claim to exemption from taxation.

"SECTION 4. The sum of $1,000 is hereby appropriated to pay the expenses of said suits and the controller is hereby authorized to draw his warrant in such sums as may be required for the same.

"Approved March 4, 1881."

The Florida Railway and Navigation Company and its organization in February, 1884, took these lines of railroad subject to this public notice and official declaration of the taxing power of the State of Florida that these lines of railroad which had heretofore escaped taxation should be subjected to taxation. Besides, it is not correct, as stated in the brief for plaintiff in error, on page 37 thereof, that—

"Under the laws of the State then in force, taxes could only be assessed against such properties as had been omitted from assessment for the three years next preceding the date of levying the assessment."

On the contrary, there was no such law in the State of Florida as alleged above that in any way limited the right of the State of Florida to pass a law taxing these lines of railroad for the years 1879, 1880, and 1881, in which they escaped assessment and taxation. The only provision of law existing at that time with reference to any limitation as to assessment of taxes related to *the power of the tax assessors* of the various counties in the State of Florida *to assess lands* in their counties *previously omitted*, and limited the power of such assessors to "*three years arrears of taxes.*" See chapter 3413 of the Laws of Florida of 1883, section 26 thereof, which is as follows:

"Assessment of land previously omitted. If any assessor when making his assessments, shall discover that any land

in his county was omitted in the assessment-roll of either or of all of the three previous years and was then liable to taxation, he shall in addition to the assessment of such land for that year, assess the same separately for such year or years as it may have been so omitted, at the just value thereof in such year, noting distinctly the year when such omission occurred; and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted and taxes shall be levied and collected thereon in like manner and together with the taxes of the year in which the assessment is made; but no land shall be assessed for more than three years' arrears of taxes, and all land shall be subject to such taxes omitted, to be assessed into whosesoever hands they may come."

It was not contended by counsel for plaintiff in error, in the courts of the State of Florida, that this provision as to assessment by tax assessors had any relation or application to railroad properties. On the contrary, it was not the province or in the power of such tax assessors to assess railroad property during the years 1879, 1880, and 1881. It was the duty of the comptroller of the State of Florida. (See sections 45, 46, pages 30 and 31, Session Acts of the State of Florida, A. D. 1879, chapter 3039.) These sections are as follows:

"SECTION 45. That the president and secretary or superintendent or manager of any railroad company whose track or road-bed or any part thereof is in this State shall annually, on or before the second Monday in July, return to the comptroller of the State under their oaths the total length and value of such roads and lines including rights of way, road-bed, side track and main track in this State and the total length and value thereof as in each county, city and incorporated town in this State; they shall also make return of the number and value of all their locomotive engines, passenger, freight, platform, construction and other cars and appurtenances, and the value thereof shall be apportioned by the comptroller *pro rata* to each mile of main track, and the controller shall notify the assessor of each county through which such railroad runs of the number of miles of track and the value thereof and the

proportion of value of personal property taxable in their respective counties, and to such values thus apportioned the assessor shall add the value of all other real property, together with all fixtures, machinery, tools, and other property within their respective counties; and upon the value thus ascertained, taxes shall be assessed the same as upon the property of individuals, and any agent of such company is authorized to pay such taxes to the collector and retain the amount out of any money in his possession belonging to such road. The president, agent, secretary, manager, treasurer, and superintendent of each railroad company, which or whose property under the laws of this State, is taxable upon or according to its income or net income shall in each year before the first Monday in July, make return to the controller and tax assessor under oath of the amount of its income or net income for the tax year, and all such returns shall be sworn to by the treasurer and one other of such officers or agents, and in case such return is not made, the officers or agent aforesaid shall be guilty of felony and shall be fined not exceeding $1,000, or be imprisoned in the State prison not more than three years and all railroad companies or property so taxable shall be taxed at ½ of 1 % of the net income and shall be so assessed by the assessor; provided however that ½ of 1 % of such income will exceed the rate of taxation imposed upon other property, that then such railroad companies shall be taxed at the rate provided for other property.

"SECTION 46. That if any railroad company shall be in the hands of the receiver or other officer, such receiver or other officer shall make the returns required by this act; and should any railroad company or its officer fail to make the returns required by this act to the controller on or before the second Monday in July, annually, the controller shall proceed to ascertain the values herein required, from the best information he can conveniently obtain and add thereto 100 % as a penalty, and apportion the same among the several counties, cities and incorporated towns through which said roads run in the manner herein provided."

And, besides, it was agreed by counsel for the State, and the plaintiff in error herein, in the supreme court of Florida, that the provision as to the tax assessors assessing for "three

years of arrears of taxes" *had no application to railroad properties.* (See pages 237, 238 of the record herein.) The opinion of the supreme court of Florida states on said pages as follows:

"The property sought to be taxed in this case is, by the law of this State, real estate (McClellan's Digest, sec. 30, p. 286, chapter 3099, Laws of Florida, act of 1879, sec. 2, p. 17)."

"Under our laws as they existed prior to the Revised Statutes, there was no lien upon such property for such taxes, until fixed by an assessment for the same (Spratt *vs.* Price, 18 Florida, 289, text 301 *et seq.;* L'Engle *vs.* Florida Central & Western R. R. Co., 21 Florida, 353). The only exception to this rule is that provided in various revenue acts in effect, that assessors might assess real estate which had escaped taxation for any of the preceding years not exceeding three, and that such lands should be liable for such back taxes in whosesoever hands they might come. *Both parties agree that this provision is not applicable to the present case.*" (Italics supplied).

So it is not correctly stated in brief for plaintiff in error, on page 37, that "taxes could only be assessed against such properties as had been omitted from assessment for the three years next preceding the date of levying the assessment." Nor is it correct, as further stated in said brief for plaintiff in error, on page 37:

"So it was that the three-year limitation on the taxing power of the State, was a valuable element which entered into the terms of every contract made with respect to such properties."

Such statements in the brief for plaintiff in error are incorrect statements of the terms, and effect, and meaning of the statutes of the State of Florida, relating to the assessment of these railroad properties. The supreme court of Florida treated the statute, as to tax assessors, assessing lands for "three years' arrears of taxes," *as inapplicable to railroad*

properties. The statement in the opinion of the supreme court of the State of Florida (*supra*) is a judicial declaration of the agreement of counsel, in the argument before it, and is binding upon counsel for plaintiff in error, and declares authoritatively the terms and meaning of the tax statutes of the State of Florida existing during the years 1879, 1880, and 1881.

II.

ARGUMENT ON THE MERITS.

Plaintiff in error, by its counsel, abandoned in their brief (p. 10) and in the outset of their oral argument the relief sought in the original bill as to exemption of lines of railroad from taxation under the eighteenth section of the internal improvement act (chap. 610, Laws of Florida, approved January 6, 1855), for the continuing period of thirty-five years from and after the completion of each of said lines of road; and plaintiff in error, by counsel, upon the argument also abandoned a second object sought in the original bill, namely, to recover the sum of $140,812.47 paid by the Florida Railway and Navigation Company in the year 1885 for taxes alleged to have been illegally assessed against it for the years 1881, 1882, 1883, and 1884. These contentions are also abandoned by plaintiff in error, first paragraph on page 10 of brief. The brief sets out the contention, in the next paragraph of said page, of the whole relief sought, in the following language:

"The whole relief sought in this court is to obtain a reversal of the decree of the State supreme court in so far as it reversed the decree of the circuit court enjoining the sale of complainant's lines of railroad for the taxes assessed for the years 1879, 1880, and 1881, such taxes amounting to $96,181.69."

And upon page 41 of brief for plaintiff in error, the real question, in its own behalf, is thus stated:

"The real question in this case is, what title did W. B. Cutting and his assignees take by virtue of their purchase at the foreclosure sale? From the authorities above cited it seems to be a logical deduction that they took whatever title the trustee in the deed of trust possessed. They were subrogated to all the rights of the bondholders and their title under the foreclosure sale related back to the condition of affairs at the date of the deed of trust, namely, July 1, 1884, the title so acquired cut out any subsequent liens which the State might have sought to impress upon the properties by the act of 1885."

But we have seen that the legislature of the State of Florida placed upon its public records, in 1881, by its joint resolution, three years before said date of July 1, 1884, the notice to the world that the lines of railroad which were afterward assessed under the act of 1885, should be made to pay its proper proportion of taxes to the support of the State government, and such assessment was made only three years back from the date of the joint resolution. This public action of the legislature of the State of Florida was embodied in the joint resolution of 1881, set out in full in the preceding pages of this brief. The supreme court of Florida, in its first decision contained in the record in this case upon the original bill, *held as a question of fact* that those persons constituting the Florida Railway and Navigation Company were the same persons, in identity and interest, as those who held and acquired title to these lines of road at judicial sale in 1879, *and were not innocent purchasers of these lines of railroad, for value.* The supreme court of Florida looked into the titles and charters of the various companies, claiming to own these lines of railroad from 1879 to 1884, and held as a *matter of fact* that the Florida Railway and Navigation Company was not an innocent purchaser for value of said properties. *This finding of fact by the supreme court* of Florida this court *will not review.*

The plaintiff in error here, taking those properties long years afterwards, in 1889, took with full notice of the statute of 1885, directing an assessment upon these lines of road, and with full notice of the joint resolution of the legislature of Florida, passed in 1881, *three years before the organization* of the Florida Railway and Navigation Company, and passed *in the last of the three years* 1879, 1880, *and* 1881, *for which these lines of railroad were assessed for taxes.*

It is impossible, and contrary to the first principles of fairness, and of law, that the plaintiff in error here should, upon such a statement of its case, defeat the State of Florida in the collection of the taxes assessed upon these lines of road in 1885. The constitution of the State of Florida, adopted in 1868, provided that the property *of all corporations organized or thereafter to be organized* in the State of Florida should be *subject to taxation*, excepting educational and benevolent corporations. These lines of road were liable to taxation for the years 1879, 1880, and 1881, but they were not so assessed until the passage of the statute of 1885.

The authorities are conclusive upon the right of the State to pass a law *retrospective in character*, and providing for the assessment and collection of taxes *for years in which property had escaped assessment and taxation.* Such legislation *is general legislation*, not contrary to the Constitution of the United States, nor any law made in pursuance thereof, and such statute of 1885 passed by the legislature of Florida was not contrary to any provisions of the State constitution, but directly in accordance with its provisions. Hence this court will not, and cannot, review *a decision of the supreme court of the State, upholding and enforcing such general legislation.* In Carpenter *et al. vs.* Commonwealth, 17 Howard, p. 456, it is said:

"This court has no authority to revise the act, of Pennsylvania, upon any grounds of justice, policy, or consistency to its own constitution. These are concluded by the decision of the public authorities of the State."

In Watson *et al. vs.* Mercer, 8 Peters, p. 88, it is said:

"As to the first point, it is clear that this court has no right to pronounce an act of the legislature void, as contrary to the Constitution of the United States, from the mere fact that it divests, antecedent, vested rights of property. The Constitution of the United States does not prohibit the States from passing retrospective laws generally; but only *ex post facto* laws."

In the dissenting opinion of Mr. Chief Justice Taylor, of the supreme court of Florida, on page 262 of the record, next to the last paragraph, the statute of 1885 is termed "an *ex post facto* statute."

This is a misnomer, as to the nature and character of the statute of 1885. *Ex post facto* statutes relate to criminal statutes, imposing penalties. Statutes civil in their nature, operating upon matters of the past, are in law known as retroactive statutes, or retrospective statutes. The statute of the State of Florida of 1885 is of the latter character, and one competent for the legislature of Florida to pass. In Albee and Bundy *vs.* May, 2 Paine, 74, it is said:

"That the law of Vermont now in question is a retrospective law, cannot be doubted. It impairs vested rights acquired under existing laws; it attaches a new disability in respect to transactions already passed and creates new liabilities. But it is not repugnant to any provisions in the Constitution of the United States, or of the State of Vermont; and this is the sole ground upon which I rest my opinion."

In support of the right of the State of Florida to pass the statute of 1885, we cite further the cases of The State, Bonney *vs.* Collector of Bridgewater, 31 N. J. L., 133; Stockdale *vs.* Insurance Companies, 20 Wall., 323; *In re* Short's Estate, 16 Pa., 63; Calder *vs.* Bull, 3 Dallas, 386; Black, Constitution Prohibition, sections 170 and 172; Bay *vs.* Gage, 36 Barber, 447. In its opinion on the original bill, page 237 of the record herein, the supreme court of Florida say:

"All property in a State ought to bear its just burden of public taxation and there can be no doubt because it is well established by authority, that if property lawfully liable thereto, escapes taxation for any one or more years it is competent for the legislature to provide for the collection of such taxes in arrears."

"Perry and Hale Counties *vs.* Selma, Marion and Memphis R. R. Co., 65 Ala., 391; Perry County *vs.* Selma, Marion and Memphis R. R. Co. (and other cases), 58 Ala., 546; Tallman *vs.* City of Janesville, 17 Wis., 71; N. C. R. R. Co. *vs.* Commissioners of Allemance, 82 N. C., 259, and Burrows on Taxation, 483.

These authorities fully sustain the power of the State of Florida, through its legislative department exercising the taxing power of the State, to pass the statute of 1885, assessing lines of railroad company for years past in which they were liable for taxation, but as to which they had escaped assessment and taxation.

Again plaintiff in error, on page 43 of its brief, assails the act of 1885, assessing taxes upon its lines of road for the years 1879, 1880, and 1881, upon the ground that other real properties of large value in the various counties, through which these lines of railroad ran, had been improperly omitted from assessment for taxes, during the same years, and yet the law of 1885 did not attempt to secure a just valuation and assessment of these other classes of property so escaping taxation. Hence it is contended, on page 45 of the brief herein of plaintiff in error, that the act of 1885, is a clear and hostile discrimination against it, and obnoxious to the constitutional prohibition as to inequality of taxation; but it will be seen, by even a casual inspection of the cases cited on pages 44 and 45 of plaintiff's brief to support said contention, that the decisions in such cases do not support plaintiff's contention, because the facts involved in such cases were entirely different in nature and character from the facts involved in the record in this case. These decisions have no application to the facts of this case. We adopt, in op-

position to plaintiff's contention upon this point, the language of the supreme court of Florida on page 243 of the record herein, and concluding on page 244 of said record. We are quite willing to subscribe to the doctrine laid down by Mr. Justice Field, in the case cited at the bottom of page 44 of plaintiff's brief, and we submit that *the definition of uniformity*, given in that case by the learned judge is correct, in which he defines it "to mean that taxes must be levied according to some fixed rate or rule of apportionment, so that all persons shall pay a like amount on *similar kinds of property of the same value.*"

The act of 1885 is aimed at any and all railroads, and only assesses them for the same amount that would have been done in those years.

In conclusion upon this point of the brief, we submit that plaintiff in error is here contending against the operation of a State law that is not inimical to the Constitution of the United States, or to any law passed in pursuance thereof, and not inimical to the constitution of the State of Florida.

Plaintiff is seeking to set aside and reverse the *decision of the State court* upon a matter *of general law within the State of Florida.* This it is not competent for this court to do. The decisions of this court seem clear upon that point. In N. O. Water Works Co. *vs.* Louisiana Sugar Refining Company, 125 U. S., p. 18, it is held therein that the constitutional provision that declares that any State shall not pass a law impairing the obligations of a contract is aimed at the *legislative power of a State and not at the decisions of its courts;* and in Knox *vs.* Exchange Bank, 12 Wall., p. 379, it is held that this court is not authorized to review the judgments of State courts because their judgments refused to give effect to "*valid contracts* or because those judgments in *their effect impair the obligations of contracts;*" and in Delmas *vs.* Insurance Company, 14 Wallace, p. 661, it is held by this court that if the State court declares a contract valid or void upon the general principles by which the courts determine

whether a consideration is good or bad on *principles of public policy*, then the decision is one that this court is not authorized to review; and in De Saussure *vs.* Gailliard, 127 U. S., p. 216, it is held that the decision of the State court "that the action of the plaintiff could not be sustained according to the meaning of the provisions of the statute under which it was brought" was conclusive upon this court.

The Federal question alleged to be involved in that case was ignored by this court on the ground that the judgment of the State court rested and was sustained upon a question *independent of the Federal question and capable of sustaining the judgment*, and in McKenna *vs.* Simpson, 129 U. S., p. 506, it is held by this court that:

"The decision of the State court in this case as to what should be deemed a fraudulent conveyance and as to the application of the evidence in reaching that decision presents no Federal question."

And in Bacon *vs.* Texas, 163 U. S., p. 207, these positions are reviewed and fully sustained. We refer again upon this point to the authorities cited in the brief to dismiss the writ of error.

ARGUMENT ON MOTION TO DISMISS WRIT OF ERROR.

Upon this branch of the case we refer to the authorities set out in the first brief on the motion to dismiss writ of error, and to that portion of the brief lately filed upon the merits, which also discusses the motion to dismiss the writ of error, and in conclusion we quote from Thorington *vs.* Montgomery, 157 U. S., 490, in which this court says:

"As to this matter, the Supreme Court held that there was nothing which the court could refuse; that no ruling was shown to have been had or asked on motion in April, 1890, although the case was continued; and that an application made October 16, 1890, was addressed to the court's discretion and could not be revised. This decision *upon a*

matter of practice under the State procedure, did not draw in question any right complainant had under the Constitution, or laws of the United States. It affords no basis for the contention that her right to be heard in her own behalf was denied, and we are of the opinion that not only was no Federal question brought to the attention of the State courts, but that none such necessarily arose or was decided."

The opinion of the supreme court of Florida, rendered upon the bill of review and dismissing the same, beginning on page 252 of the record, and ending on page 260, concludes as follows:

"We have carefully examined the evidence and without further special reference to it, state our conclusion that it fails to show that the new matter alleged was not known, or could not by the use of reasonable diligence, have been known to appellee or its agents, in time for use before the hearing of the cause. In the absence of such showing it is impossible to sustain the decree, without going contrary to the well-settled rules of law on the subject. It, therefore, becomes unnecessary to examine further whether the new matter did exist or its character and effect * * * Judgment will accordingly be entered in this court dismissing the bill. Filed June 26, 1900."

The writ of error in this case seeks to examine and revise this decision of the supreme court. The writ of error herein does not seek to revise or examine the decrees rendered by the supreme court of Florida in 1895 and in 1897, which had already become final. The decision of the supreme court of Florida rendered in 1900 does not decide a Federal question, but merely *a question of practice under the procedure of the State of Florida*. The Federal question raised in the original bill was decided, if decided at all, by the final decrees of the supreme court of Florida rendered in 1895 and in 1897. The decrees were final decrees and conclusive in their character. The order in the court below allowing the writ of error herein limits its application to the final decree rendered by the supreme court of Florida in

1900 (R., p. 223). Hence we move to dismiss the writ of error issued herein because the bar arising from the lapse of time has intervened.

AS TO ABATEMENT OF SUIT FOR WANT OF PARTIES.

The attention of the court is called to the remarkable position, assumed in the contention on the part of the plaintiff in error, to the effect that the suit instituted by it has abated by reason of changes in the personnel of comptroller of the State of Florida. What more complete demonstration can be had, of the contention that the course pursued by the plaintiffs in error, is predicated more upon the desire of this corporation to hinder, and delay the State, in the collection of taxes, than upon any merit there may be in the propositions under the guise of which the case has been submitted to this court.

Of the cases cited on this point, that of United States *ex rel vs.* Butterworth, 169 U. S., 600, was a writ of mandamus; and that of Alby Stock Co. *vs.* Smith, 165 U. S., 128, and 166 U. S., 717, were proceedings for mandatory injunctions based, as in writs of mandamus, upon alleged delinquency on the part of the public officer "*personal*" in its nature and "did not involve any charge against the Government whose officers they were."

Neither was there a voluntary submission on the part of the successor in office to the jurisdiction of the court or any waiver of the point, as was done in the case at bar. It will readily be seen that these cases have no application to this. The injunction sought herein was not mandatory, but prohibitive. While directed against the proper officer of the State, it was not personal in its nature. The proper officer of the State is now in court, and it does not lie in the mouth of the complainants to object to the voluntary submission of such proper officer to the jurisdiction of this court for the purpose of bringing to a speedy conclusion whatever there might be of merit in the cause of the plaintiff in error.

Finally

We cite this honorable court to the irrelevant paragraph on page 44 of brief for plaintiff in error, which reads as follows:

"In almost every State today there is observable a determination and a tendency to impose upon corporations much more than their fair share of the burdens of taxation. This is now done sometimes under the pretense of classification, and sometimes as a franchise or license tax. That these taxes are becoming grossly unjust and oppressive cannot be denied."

Guthrie, The Fourteenth Amendment to the Constitution of the United States, p. 120.

The implication and inference sough to be injected into the consideration of this case by that paragraph is *that the State of Florida seeks to spoliate this corporation, plaintiff in error here;* but we submit that this corporation, the plaintiff in error here, seeks to thwart the State of Florida in the collection of its proper revenues for the maintenance of its State government, its public schools, and for the payment of bonds issued by counties in Florida for the construction of portions of the lines of plaintiff's railroad, said bonds issued nearly fifty years ago and still unpaid and a burden upon the people who issued them.

On the motion to advance this case made in February last the following printed affidavits were submitted from the then comptroller and the present superintendent of public instruction of the State of Florida:

"State of Florida, }
"*Leon County.* }

"I, W. N. Sheats, do hereby certify that I am the superintendent of public instruction for the State of Florida, am familiar with the public-school system of said State and have supervision of the public schools thereof, and know

the sources from which revenue is obtained to maintain said schools as well as the annual sums necessary to keep them in successful operation, and furthermore that the school taxes involved in the suit of the Florida Central and Peninsular Railroad Company against William H. Reynolds, as comptroller of the State of Florida, and John A. Pearce, as sheriff of Leon county, now pending in the Supreme Court of the United States, are necessary for the support of the public schools, and the delay in the collection of it is embarrassing the operation and maintenance of said schools.

"Given under my hand and official seal this 14th day of February, A. D. 1901.

"[SEAL.] WM. N. SHEATS,
"*Superintendent of Public Instruction*
"*of the State of Florida.*"

"STATE OF FLORIDA, }
"*Leon County.* }

"I, William H. Reynolds, do hereby certify that I am comptroller of the State of Florida and that the facts stated in the second reason assigned in the foregoing motion (as to the amount of taxes assessed) for advancing said case are true, that the State of Florida and various counties will be greatly benefited by the collection of said taxes and that the counties of Leon, Jefferson, Madison, Baker, and Bradford have now outstanding and unpaid county bonds varying in each county in amount from about six thousand dollars to thirty-five thousand dollars issued in aid of construction of the railroad to which the said Florida Central and Peninsular Railroad Company is the successor and upon which bonds annual interest at six per cent. is paid, and part of the amount involved in said sum of $96,181.69 will go to the payment of principal and interest on said bonds.

"Given under my hand and official seal this 14th day of February, A. D. 1901.

"[SEAL.] "WM. H. REYNOLDS,
Comptroller of the State of Florida."

It is suggested on page 42 of the brief for plaintiff in error as follows:

"If the act of 1885 and the assessments for the years 1879–1881 thereunder be held to be valid, and the taxes so as-

sessed declared to be a lien against the property, even in the hands of a *bona fide* purchaser, what bar would there be to the passage of further acts by the legislature providing for the assessment and collection of taxes upon these properties for the years from 1868 to 1879, for which years no taxes have been collected? If such course be pursued, what of value would there be left to the bondholders or the purchasers at the foreclosure sales?"

We answer, that the State of Florida, under the decision of 1895, of its supreme court, embraced in the record herein, is concluded against such an attempt by the fact that as to *any further assessment behind the years 1879, 1880 .1881*, the plaintiff in error is now, under such decision, *a purchaser for value.*

WM. B. LAMAR,
Attorney General of Florida.
GEO. H. LAMAR,
Counsel for Defendants in Error.

Office Supreme Court U.S.
FILED
FEB 18 1901
JAMES H. McKENNEY,
Clerk.

No. 463. 183.

Motion to advance.

Supreme Court of the United States.

October Term, 1900.

Filed Feb. 18, 1901.

No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Motion to Advance Case for a Hearing.

W. B. LAMAR,

ATTORNEY-GENERAL FOR THE STATE OF FLORIDA,
COUNSEL FOR DEFENDANTS IN ERROR.

THE H. & W. B. DREW COMPANY JACKSONVILLE FLA. 81675

Supreme Court of the United States.

October Term, 1900.

No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Motion to Advance Case for a Hearing.

W. B. LAMAR,

ATTORNEY-GENERAL FOR THE STATE OF FLORIDA,
COUNSEL FOR DEFENDANTS IN ERROR.

Supreme Court of the United States,

October Term, 1900.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY,
Plaintiff in Error,

VS.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE AS SHERIFF OF LEON COUNTY,
Defendants in Error.

Number 463

And now comes the Defendants in Error, herein by William B. Lamar, their counsel appearing in that behalf, and moves the Court to advance the above entitled case and set the same for a hearing at an early day during the present term of the Court, for the reasons following, to-wit:

FIRST—Because the purpose of said suit is to establish the exemption of the railroads of the plaintiff in error from taxation under the 18th Section of the Internal Improvement Act, Chapter 610, Laws of Florida; and to recover back the sum of $140,812.47, which was paid by the Florida Railway and Navigation Company, to the State of Florida, in 1885, for the taxes assessed on said Railroads for the years 1882, 1883 and 1884; and to enjoin the collection of the taxes assessed on said Railroads for the years 1879, 1880 and 1881 under the provisions of the Statutes of Florida, Chapters 3558 and 4073.

Furthermore this suit involves the liability of the said Railroads under the revenue laws of said State, and in the meantime stays the execution of said laws.

These railroads comprise upwards of three hundred and sixty-four miles of track, and also depots, machine shops, rolling stock and appurtenances valued at upward of ten million dollars and constitute a larger proportion of the taxable railroad property of said State.

SECOND—Because the taxes involved in this suit amount in the aggregate to $96,181.69, upon which no interest is chargable under the laws of the State of Florida for delay in the payment thereof. Besides this amount is composed of $37,318.69, assessed for general revenue for said State, and $5,971.09 assessed for the public school fund for said State, and $21,053.72, assessed for revenue for the Counties of Suwannee, Alachua, Baker, Bradford, Clay, Columbia, Gadsden, Jefferson, Levy, Leon, Madison, Nassau and Wakulla, of said State, and $15,068.76, assessed for the public schools for said several counties, and $16,769.43, assessed as a special tax for said several counties. See printed record, page 24. These taxes are necessary to defray current expenses of the State and counties aforesaid and maintain the public schools thereof; and the operations of the State and county governments and the maintenance of the public schools thereof are embarrassed by delay in the collection of them and the staying of the execution of the revenue laws aforesaid.

THIRD—Because the said case was advanced by the Supreme Court of the State of Florida.

W. B. LAMAR,
Attorney-General of Florida,
and Counsel for Defendants in Error.

To T. L. Clarke, Frederick D. McKenney, Attorneys for Plaintiff in Error.
Wayne Mc Veagh, J. A. Henderson, of Counsel for Plaintiff in Error.

You are hereby notified that the motion of which the foregoing is a true copy will be made before the Supreme Court of the United States on the 25th day of February, 1901, at the opening of said Court on that day, or as soon thereafter as counsel can be heard.

Annexed hereto is a copy of the authorities as well as copies of certificates, which will be submitted with the motion in support thereof.

W. B. LAMAR,
Attorney-General of the State of Florida
and Counsel for Defendants.

Rev. Stat. Sec. 949.
Hoge vs. Richmond and Danville R. R. Co., 93 U. S. 1.

STATE OF FLORIDA. }
LEON COUNTY. }

I, W. N. Sheats, do hereby certify that I am the Superintendent of Public Instruction for the State of Florida, am familiar with the public school system of said State and have supervision of the public schools thereof, and know the sources from which revenue is obtained to maintain said schools as well as the annual sums necessary to keep them in successful operation, and furthermore that the school taxes involved in the suit of the Florida Central and Peninsular Railroad Company against William H. Reynolds as Comptroller of the State of Florida and John A. Pearce as Sheriff of Leon County, now pending in the Supreme Court of the United States are necessary for the support of the

public schools, and the delay in the collection of it is embarrasing the operation and maintenance of said schools.

Given under my hand and official seal this 14th day of February, A. D. 1901.

[SEAL] WM. N. SHEATS,
Superintendent of Public Instruction of the State of Florida.

STATE OF FLORIDA, }
LEON COUNTY. }

I, William H. Reynolds, do hereby certify that I am Comptroller of the State of Florida and that the facts stated in the second reason assigned in the foregoing motion (as to the amount of taxes assessed) for advancing said case are true, that the State of Florida and various counties will be greatly benefitted by the collection of said taxes and that the counties of Leon, Jefferson, Madison, Baker, and Bradford have now outstanding and unpaid county bonds varying in each county in amount from about six thousand dollars to thirty-five thousand dollars issued in aid of construction of the railroad to which the said Florida Central and Peninsular Railroad Company is the successor and upon which bonds annual interest at six per cent is paid, and part of the amount involved in said sum of $96,181.69, will go to the payment of principal and interest on said bonds.

Given under my hand and official seal this 14th day of February, A. D. 1901.

[SEAL] WM. H. REYNOLDS,
Comptroller of the State of Florida.

Supreme Court of Florida, January Term,

A. D. 1900.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY, FLORIDA,
Appellants,

VS.

THE FLORIDA CENTRAL AND PENINSULAR RAILROAD COMPANY.
Appellee.

Now comes W. B. Lamar as Attorney-General, and moves the Court to advance the above cause for hearing and decision upon the ground that the State of Florida is directly interested therein, the same involving the collection of the State's revenue.

W. B. LAMAR,
Attorney-General, for the Motion.

Filed. March 6, 1900.

Tallahassee, March 6, 1900.
Tuesday, 10 o'clock A. M.

Court met pursuant to adjournment.

Present: HON. R. F. TAYLOR, Chief Justice,
HON. M. H. MABRY, } Justices.
HON. F. B. CARTER, }

WILLIAM H. REYNOLDS, COMPTROLLER, &c., *et al*,
Appellants,
VS.
F. C. & P. R. R. Co.,
Appellee.

This cause coming on to be heard upon motion of the Attorney-General to advance the same for hearing and decision, upon the ground that the State of Florida is directly interested therein, and the Court being advised of its judgment in the premises, it is ordered that the same be granted; and it is further ordered that the appellants shall file four copies of their brief in this Court on or before the 17th day of March, 1900, and that the appellee shall file four copies of its brief on or before the 24th day of March, 1900, and that the said cause shall be orally argued, if the parties so desire, on the 27th day of March, 1900, and that the Clerk of this Court shall at once notify all parties of this order.

I, B. B. Wilson, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing two pages contain true copies of a motion, and an order of the said Supreme Court, in the case of William H. Reynolds, Comptroller, &c., *et al.*, Appellants, *vs.* F. C. & P. R. R. Co., Appellee, as the same appear upon the records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court, at the city of Tallahassee, the Capital, this 14th day of February, A. D. 1901.

[SEAL] B. B. WILSON,
Clerk Supreme Court, State of Florida.

Supreme Court of the United States.

No. 183.—October Term, 1901.

The Florida Central and Peninsular Railroad Company, Plaintiff in Error,
vs.
William H. Reynolds, as Comptroller of the State of Florida, and John A. Pierce, as Sheriff of Leon County.

In error to the Supreme Court of the State of Florida.

[January 6, 1902.]

The constitution of Florida of 1868, art. 16, sec. 24, as amended by art. 11 of the amendments of 1875, is as follows:

"The property of all corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such property be held and used exclusively for religious, educational or charitable purposes."

Sec. 26, chap. 3413, of the Laws of Florida, 1883, reads:

"If any assessor, when making his assessments, shall discover that any land in his county was omitted in the assessment roll of either or all of the three previous years, and was then liable to taxation, he shall, in addition to the assessment of such land for that year, assess the same separately for such year or years that may have been so omitted, at the just value thereof in such year, noting distinctly the year when such omission occurred; and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted, and taxes shall be levied and collected thereon in like manner and together with the taxes of the year in which the assessment is made; but no lands shall be assessed for more than three years' arrears of taxes, and all lands shall be subject to such taxes omitted to be assessed, into whosoever hands they may come."

In 1885 this statute was passed:

"Sec. 1. That in all cases in which any railroad or the properties thereto belonging or appertaining in this State, in the tax years commencing March 1, 1879, 1880 and 1881, or any of such years were not assessed for taxes for such years, it shall be the duty of the comptroller to cause the same or so much thereof as were not assessed to be assessed for State and county taxes, and twenty per centum of the taxes so assessed for said years and now unpaid shall be collected at the same time the taxes for the year 1885 shall be assessed and collected, and each year thereafter an additional twenty per centum of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid.

"The taxes to be assessed under this act shall be the same in amount as they would have been had they been assessed in such years or any of them as to which there was a failure to assess." (Laws of Florida, 1885, chap. 3558.)

This statute was followed in 1891 by one in these words:

"SEC. 1. That the State and county taxes assessed by the comptroller of the State of Florida, upon any railroads and the properties thereof in said State for the years 1879, 1880 and 1881, under and in pursuance of 'An act to provide for the assessment and collection of taxes on railroads and the properties thereof for the years 1879, 1880 and 1881, as to which there was no assessment,' but which have not been collected, shall be collected, and the payment thereof enforced at the same times and in the same manner as is now, or may hereafter be provided by law, for the collection and the enforcement of the payment of taxes assessed upon the railroads and the properties thereof in the State of Florida." (Laws of Florida, 1891, chap. 4073.)

The assessment of railroad property in Florida was not made by the county assessors but by the comptroller of the State. (Acts State of Florida, 1879, chap. 3099, secs. 45, 46.)

The plaintiff is a corporation organized under the laws of Florida on November 17, 1888, and was the owner of several lines of railway, which on May 1, 1889, it acquired from the Florida Railway and Navigation Company, under foreclosure proceedings. The Florida Railway and Navigation Company was organized on February 29, 1884, by the consolidation of several companies, and on July 1 of that year it placed upon its properties a trust deed to secure the payment of $10,000,000 bonds.

This bill was filed November 2, 1892, in the circuit court of the second judicial circuit of Florida, in and for the county of Leon. Its purpose was to restrain the collection of certain taxes and to recover other taxes paid under protest. After three appeals to the Supreme Court of the State (35 Fla. 625, 39 Fla. 243, 28 Southern Rep. 861) the final outcome of the litigation was a decree dismissing the plaintiff's bill *in toto.*

Mr. Justice BREWER delivered the opinion of the Court.

No question is presented concerning the claim for the taxes paid under protest, counsel for plaintiff stating in their brief that "the sole relief sought in this court is to obtain a reversal of the decree of the State Supreme Court, in so far as it reversed the decree of the circuit court enjoining the sale of complainant's lines of railroad for the taxes assessed for the years 1879, 1880 and 1881, such taxes amounting to $96,181.69," and in respect to this matter they sum up their contention in these words:

"By the law of 1885 the State attempted to authorize the assessment of taxes for 1879–1881, but only upon property belonging to railroad companies, though it appears from the record that other properties of like class, *i. e.*, real estate belonging to individuals and owners, not railroad companies, had not been assessed for taxes for such years.

"It surely cannot be 'due process of law' for the State of Florida in 1885, to arbitrarily impose a burden theretofore unheard of upon security holders who in 1884 had invested their money upon the faith of a title then clear of such burden.

"It surely cannot be less than a denial of the equal protection of the laws for the State of Florida in 1885 to impose burdens theretofore unheard of upon the property of railroad companies, which under the laws of Florida is real estate, while permitting other real estate, otherwise owned, to escape such burdens."

The decision of the Supreme Court of the State establishes that these proceedings are not in conflict with the constitution of Florida. The single question, therefore, to consider is whether there is anything in the Federal Constitution which forbids a State to reach backward and collect taxes from certain kinds of property which were not at the time collected through lack of statutory provisions therefor, or in consequence of a misunderstanding as to the law or from neglect of administrative officials, without also making provision for collecting the taxes for the same years on other property. It will be perceived that there was no new levy of taxes. No act of the legislature was passed imposing an additional burden upon the property of the State in general, or upon any particular property, but the case is one in which general levies having been made for the years named certain property which ought to have paid taxes under them —and thus contributed its share of the expenses of the State—failed to do so, and the effort is to compel that property to discharge its obligation. The objection is not that the property ought not during those years to have paid its proportion of the taxes, but that it ought not now to be compelled to pay such proportion because certain other property was similarly situated and no effort is made to compel payment from it.

The fault, if fault there be, is one of omission rather than commission. The act of the legislature is not a mandate to a single officer, charged with the duty of assessing all property, to assess certain property and to omit to assess the rest, but the general legislation having provided that railroad property should be assessed by the comptroller and real estate by county assesors, the act simply directed the comptroller to discharge the duties of assessment as to the property committed to his care, and omitted any direction to the county assessors. This omission, it is contended, makes the act unconstitutional. In other words, the legislature may not pass an act directing one officer to discharge his duty unless it couples therewith a direction to other officers charged with kindred duty to perform theirs. It would seem to follow that if the legislature had, on the same day, passed another act with like command to the county assessors, the two acts together would be constitutional, though each standing alone would not be; and as the time of its passage is not generally of the essence of a statute, it would also seem to follow that if the legislature should to-day pass an act directing the county assessors to assess delinquent real estate for those years, this late enactment would give constitutional vitality to that passed years ago. How far can this theory of constitutionality be sustained?

It must be remembered that "taxes are not debts in the ordinary sense of that term;" that they are "the enforced proportional contribution of persons and property, levied by the authority of the State for the support of the government, and for all public needs." (Cooley on Taxation, 1st ed. pp. 13 and 1.) They are obligations of the highest character, for only as they are discharged is the continued existence of government possible. They are not canceled and discharged by the failure of duty on the part of any tribunal or officer, legislative or administrative. Payment alone discharges the obligation, and until payment the State may proceed by all proper means to compel the performance of the obligation. No statutes of limitation run against the State, and it is a matter of discretion with it to determine how far into the past it will reach to compel performance of this obligation.

No question of *bona fide* purchase arises, for it was held by the Supreme Court that inasmuch as no assessment of this railroad property had been made during the years named, and no lien thereon for taxes established, a *bona fide* purchaser would have taken it free from any liability for such taxes, but it was also held that the present owner was not a *bona fide* purchaser, and this being a local matter the decision is conclusive upon this court.

The question how far the provisions of the Fourteenth Amendment interfere with a State's system of taxation has been more than once before this court. It was very carefully considered in *Bell's Gap Railroad Co.* v. *Pennsylvania*, (134 U. S. 232,) and the general rule thus stated by Mr. Justice Bradley on page 237:

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. . . . We think that we are safe in saying that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation."

It is well known that the States vary materially in their systems of taxation. Each determines for itself what in its judgment is best for the interests of its people. In some there are general exemptions of particular classes of property, such as property used for religious, educational and benevolent purposes. Some, in order to encourage certain industries, such as manufacturing, make either general or special exemptions. Some think it for their best interest to derive their revenues from personal property,

corporations and licenses, and exempt real estate. In some, contracts for exemption are authorized by the State constitution; in others, they are forbidden. Now, considering the great diversity in these systems it would obviously have worked a marked revolution if the first section of the Fourteenth Amendment had been construed as compelling a cast iron rule of equal taxation. It was not intended, as held in the case quoted from, and also in *Barbier* v. *Connolly*, (113 U. S. 27,) to restrain the legislature from any proper and legitimate classification both as respects property for taxation and the methods of assessment and taxation. Doubtless it would prohibit a State from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others whose property was similarly situated, but it does not prevent a State from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way.

Besides those just cited, other cases in this court affirm the same propositions. In *The Delaware Railroad Tax*, (18 Wall. 206,) a special act of the State of Delaware imposing a tax of three per cent upon the net earnings or income received by railroad and canal companies from all sources was sustained, the court saying (p. 231):

"The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary and capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction."

In *Home Insurance Company* v. *New York*, (134 U. S. 594,) a tax upon the corporate franchise or business of corporations, graded according to the dividends declared by the corporation, was sustained, the court, on p. 606, referring in these words to the objection that the tax was in conflict with the Fourteenth Amendment:

"But the amendment does not prevent the classification of property for taxation—subjecting one kind of property to one rate of taxation and another kind of property to a different rate—distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special either in the extent to which it operates, or the objects sought to be obtained by it. And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected. Under the statute of New York all corporations, joint stock companies and associations of the same kind

are subjected to the same tax. There is the same rule applicable to all under the same conditions in determining the rate of taxation. There is no discrimination in favor of one against another of the same class. (*Barbier* v. *Connolly*, 113 U. S. 29, 32; *Soon Hing* v. *Crowley*, 113 U. S. 703, 709; *Missouri Pacific Railway* v. *Humes*, 115 U. S. 512, 523; *Missouri Pacific Railway* v. *Mackey*, 127 U. S. 205, 209; *Minneapolis Railway Co.* v. *Beckwith*, 129 U. S. 26, 32.)"

In *Giozza* v. *Tiernan*, (148 U. S. 657,) a difference in the amount of license required from parties carrying on different kinds of business, was the ground of attack upon a State statute, but the statute was sustained, and in respect to the Fourteenth Amendment it was said (p. 662):

"Nor in respect of taxation was the amendment intended to compel the State to adopt an iron rule of equality; to prevent the classification of property for taxation at different rates; or to prohibit legislation in that regard, special either in the extent to which it operates or the objects sought to be obtained by it. It is enough that there is no discrimination in favor of one as against another of the same class. (*Bell's Gap Railroad* v. *Pennsylvania*, 134 U. S. 232; *Home Insurance Co.* v. *New York*, 134 U. S. 594; *Pacific Express Co.* v. *Seibert*, 142 U. S. 339.) And due process of law within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government. (*Leeper* v. *Texas*, 139 U. S. 462.)"

In *King* v. *Mullins*, (171 U. S. 404,) a discrimination in the laws of West Virginia as to the matter of forfeiture in tax proceedings between the owners of tracts of less than one thousand acres and those owning larger tracts, was challenged, but the court overruled the contention, saying (p. 435):

"Another point made by the plaintiff in error is, that the provision of the constitution of Virginia, exempting tracts of less than one thousand acres from forfeiture is a discrimination against the owners of tracts containing one thousand acres or more, which amounts to a denial to citizens or landowners of the latter class of the equal protection of the laws. We do not concur in this view. The evil intended to be remedied by the constitution and laws of West Virginia was the persistent failure of those who owned or claimed to own large tracts of lands, patented in the last century, or early in the present century, to put them on the land books, so that the extent and boundaries of such tracts could be easily ascertained by the officers charged with the duty of assessing and collecting taxes. Where the tract was a small one, the probability was that it was actually occupied by some one, and its extent or boundary could be readily ascertained for purposes of assessment and taxation. We can well understand why one policy could be properly adopted as to large tracts which the necessities of the public revenue did not require to be prescribed as to small tracts. The judiciary should be very reluctant to interfere with the taxing systems of a State, and should never do so unless that which the State attempts to do is in palpable violation of the constitutional rights of the owners of property. Under this view of our duty, we are unwilling to hold that the provision referred to is repugnant to the clause of the Fourteenth Amendment forbidding a denial of the equal protection of the laws."

See also *Pacific Express Company* v. *Seibert*, (142 U. S. 339;) *Thomas* v. *Gay*, (169 U. S. 264.) Text-books affirm the same doctrine. Burroughs on Taxation, sec. 56, says: "The rule is, that the legislature may select the subjects of taxation in their discretion;" and in Cooley on Taxation, chap. 6, p. 124, it is said: "There is no imperative requirement that taxation shall be equal. . . . The legislature must decide when and how and for what public purposes a tax shall be levied, and must select the subjects of taxation. This is legislative, and the legislative conclusion in the premises must be accepted as proper and final."

Gilman v. *City of Sheboygan*, (2 Black, 510,) is not in conflict with these views. True, in that case a tax levied for a special purpose by the city was adjudged void on the ground that it was levied exclusively on real property, but the decision was placed upon a conflict with the constitution of the State as interpreted by its Supreme Court. In other words, the Supreme Court of the State having in several cases held that such a discrimination avoided a tax, this court simply followed those decisions, saying, p. 518, that it considered itself "bound in cases like this to follow the settled adjudications of the highest State court giving constructions to the constitution and laws of the State."

In the light of these decisions if the State of Florida had deemed it for the best interests of its people to encourage the building of railroads by exempting their property from taxation, such exemption could not have been adjudged in conflict with the Fourteenth Amendment, even though thereby the burden of taxation upon other property in the State was largely increased. Indeed, that was the policy of the State prior to the constitution of 1868. And, conversely, if the State had subjected railroads to taxation, while exempting some other class of property, it would be difficult to find anything in the Fourteenth Amendment to overthrow its action. The mere fact that such legislation may operate with harshness is not of itself sufficient to justify the court in declaring it unconstitutional. These matters of classification are of State policy, to be determined by the State, and the Federal government is not charged with the duty of supervising its action.

If the State, as has been seen, has the power, in the first instance, to classify property for taxation, it has the same right of classification as to property which in past years has escaped taxation. We must assume that the legislature acts according to its judgment for the best interests of the State. A wrong intent cannot be imputed to it. It may have found that the railroad delinquent tax was large, and the delinquent tax on other property was small and not worth the trouble of special provision therefor. If taxes are to be regarded as mere debts, then the effort of the State to collect from one debtor is not prejudiced by its failure to make like effort to collect from another. And if regarded in the truer light as a

contribution to the support of government, then it does not lie in the mouth of one called upon to make his contribution to complain that some other person has not been coerced into a like contribution. In *Winona & St. Peter Land Co.* v. *Minnesota*, (159 U. S. 526,) legislation of Minnesota for the collection of delinquent taxes on real estate was challenged because of a lack of similar legislation in respect to personal property, but the challenge was overruled, the court saying (p. 539):

"This statute rests on the assumption that, generally speaking, all property subject to taxation has been reached and aims only to provide for those accidents which may happen under any system of taxation, in consequence of which here and there some item of property has escaped its proper burden; and it may well be that the legislature in view of the probabilities of changes in the title or situs of personal property might deem it unwise to attempt to charge it with back taxes, while at the same time, by reason of the stationary character of real estate, it might elect to proceed against that. At any rate, if it did so it would violate no provision of the Federal Constitution, and whether it did so or not was a matter to be determined finally by the Supreme Court of the State."

Our conclusion is that, so far as the Federal Constitution is concerned, the legislature of Florida had the power to compel the collection of delinquent taxes from the railroad companies for the years 1879, 1880 and 1881, even though it made no provision for the collection of delinquent taxes for those years on other property. The judgment, therefore, of the Supreme Court of Florida is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 183.—October Term, 1901.

Florida Central, &c., R. R. Co.
vs.
William H. Reynolds, Comptroller.

[January 6, 1902.]

Mr. Justice Brown dissenting.

I have no doubt whatever of the validity of the act of the legislature of Florida of 1883 requiring the assessor, upon discovering that any land in his county was omitted from the assessment roll of the three previous years, to assess the same for such years, since this was a provision applicable to all real estate in his county omitted from the assessment rolls for such years. But the act of 1885 did not proceed upon this basis. It arbitrarily selects railroad properties from all other species of property, and requires their assessment for another three years prior to the three covered by the act of 1883, and thereby, as it seems to me, denies them the equal protection of the laws. Under the act of 1883 *all* owners of real property omitted from the assessment rolls of the there previous years were put upon an equality, and made debtors to the State for the taxes of those years; but to segregate railroads from all other delinquent property, and tax them for another three years, as is done by the act of 1885, seems to me to open the statutes to the criticism of the court, wherein it is said: "Doubtless it" (the Fourteenth Amendment) "would prohibit a State from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others whose property was similarly situated."

It appears quite immaterial that under the act of 1883 the property was to be assessed by the county assessors, and in the act of 1885 by the State Comptroller. The wrong done to the railway company is not in the selection of an agent to collect the taxes, but in the selection of a specially odious tax, namely, for antecedent years, and imposing it upon one class of delinquents alone. If, for instance, a license tax, varying in amount, were imposed upon a dozen different occupations, and by another act, subsequently passed, were made retroactive for three years, could the legislature by still another act, made applicable only to those employed in one out of these twelve occupations, make such act retroactive for another three years, without denying to those engaged in that occupation the equal protection of the laws?

I do not wish to be understood as saying that the State may not impose a specific and even a discriminating tax upon railways, but after the liability to the State of all real property owners has once been established, and all placed upon the same footing, I do not think a particular species of property can be arbitrarily taken and subjected to a discriminating tax for a series of years, during which, and upon the ground that, the State officers had neglected their duty. If State railway taxes may be made retroactive for three years, and again for another three years, I see no reason why this method of taxation may not be continued indefinitely so long as any property remains from which it may be collected. This kind of discrimination seems to be measurable only by the rapacity of the legislature.

True copy.

Test:

Clerk Supreme Court, U. S.